# OVERSIGHT ON EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1982

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## HEARINGS

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED

OF THE

COMMITTEE ON

LABOR AND HUMAN RESOURCES

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

ON

OVERSIGHT ON PROPOSED REGULATIONS IMPLEMENTING PART B, PUBLIC LAW 94-142, THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

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# OVERSIGHT ON EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1982

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TUESDAY, AUGUST 10, 1982

U.S. SENATE,
SUBCOMMITTEE ON THE HANDICAPPED,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:04 a.m., in room 4232, Dirksen Senate Office Building, Senator Lowell Weicker, Jr. (chairman of the subcommittee) presiding.

Present: Senators Weicker, Hatch, Stafford, Quayle, East, Kennedy, and Randolph.

## OPENING STATEMENT OF SENATOR WEICKER

Senator **WEICKER**. Our hearing will come to order.

Since the passage of the Education for All Handicapped Children Act in 1975, we as Americans have witnessed a success story almost without parallel in history. Literally millions of youngsters once confined to the outskirts of our society because of their disabilities have joined the ranks of their nondisabled peers. No longer are they confined in distant institutions with their bodies, minds, and talents left ignored to wither. Now these courageous kids, eager and capable to learn, sport the bright faces of self-worth. They live at home, attend school and, most importantly, grow to their fullest.

To be sure, many can share in the credit for this success story: Loving, caring parents who give generously of their time and other resources; dedicated education and related services professionals who devote their careers to making special education work; and, yes, even the Congress itself which has maintained, funded, and extended the life of Public Law 94-142. But the largest share of the credit goes to those priceless children themselves. They have made us see them as people, not disabled people, but young people more than willing and able to overcome their handicaps.

This is what this morning's hearing is all about—disabled youngsters, and whether the regulations just proposed will help secure the education they need. Before hearing from Secretary Bell, however, I would note for the record that, to date, the only proposals we have seen from this administration have sought to gut special education.

We have been asked to repeal Public Law 94-142. We have been asked to cut its funding by 25 percent, then another 8 percent, and, failing, an even 30 percent. We have been promised legislation repealing portions of the act, and we have rejected every single one of these proposals.

Now, we are being told that the same people who asked us to decimate the law and to slash funding are selling a regulatory rewrite as an improvement for the disabled. We shall see today whether that is the case or whether the administration is attempting to do by regulation what it has been unable to do in the Congress: to eliminate our Nation's system of special education.

We have as our first witness the Secretary of the Department of Education, Terrel Bell. Mr. Secretary, why do you not go ahead and introduce those who accompany you, and then proceed with the presentation of your testimony in any way that you deem fit?

## STATEMENT OF HON. TERREL H. BELL, SECRETARY, U.S. DEPARTMENT OF EDUCATION, ACCOMPANIED BY ED SONTAG, DIRECTOR, SPECIAL EDUCATION PROGRAMS, U.S. DEPARTMENT OF EDUCATION; AND THOMAS ANDERSON, SPECIAL COUNSEL TO THE SECRETARY, U.S. DEPARTMENT OF EDUCATION

Secretary **Bell**. Thank you, Mr. Chairman. I am pleased to introduce on my left Dr. Ed Sontag, who is the Director for Special Education Programs in the Department of Education and, let me say, in my opinion, one of the most distinguished professionals in the Nation in the area of special education; and Thomas Anderson, who is Special Counsel to the Secretary and was involved in developing these proposed regulations.

I would like to make it clear, Mr. Chairman, at the outset that the overriding interest of the Department of Education and my own personal commitment is to ensure that every handicapped child in the Nation receives a free and appropriate education.

I would like to submit my full statement for the record. I would like to summarize it briefly, and that will allow more time for questions and answers.

Senator **Weicker**. Your statement in its entirety will be included in the record, you may go ahead and proceed.

Secretary **Bell**. Our first concern in developing these regulations was an overriding concern that we protect the rights of handicapped children.

Second, we have a concern about the State and local education agencies. We have confidence in their wisdom and judgment and ability to make some decisions. We believe that these officials, just like us, have compassion and concern and good judgment about the education of handicapped children.

Also, we have been concerned about the fact that we are dealing with a very complex universe out there. There are 50 States, and now all 50 States have special education laws that are providing for education of the handicapped. I would express to the chairman that a lot of credit for this goes to the legislation passed by the Congress; but it is also very important to emphasize that many States had laws protecting the educational rights of handicapped long before the Federal legislation was passed.

In my own State, back in the 1960's while I was serving as State superintendent of public instruction, the Utah Legislature passed a very fine and very comprehensive program of education for the handicapped.

So, we have a problem of harmonizing our rules and our procedures and our statutes with 50 State statutes. I should emphasize that we should not ignore those statutes as we look at the Federal statute.

A third consideration that I weighed carefully in developing these proposed changes was a mandate given to the Department of Education when it was established. Congress specifically provided that, and I quote,

> The establishment of the Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems.

In addition to that, Congress went on and said this:

> It is the intention of the Congress to protect the rights of State and local governments and public and private educational institutions in the areas of educational policies and administration of programs.

So, what we have strived to do, Mr. Chairman, is strike a good balance between these rights of these local and State education entities and the rights of the handicapped children, as is mandated in Public Law 94-142. We wanted to stay within the mandates and the guidelines that Congress set down, and at the same time we wanted to have a good balance in protecting the rights of the handicapped.

Another concern that I had to relate to was a Presidential Executive order. President Reagan issued Executive Order 12291 which directed the executive branch to look at and review regulations. We were specifically instructed not to impose overly prescriptive, intrusive and burdensome regulations which cause unnecessary paperwork and divert time and attention from the prime purposes of the laws that we are administering. I tried to be responsive to and concerned about that.

We also wanted to avoid, legislation by regulation. We tried, as carefully as we could, to not begin to function as the law-making branch in the Department of Education. We carefully examined the statutory language and the legislative history, and we have attempted to conform our regulations to the intent of Congress.

I would admit that in some instances where there are ambiguities and lack of clarity, we have had to bend that requirement a little bit, but we have tried to concern ourselves about that.

As the chairman just indicated, this statute now has been operative for 5 years. When we started and the regulations were written, we had very little experience with the law. Our predecessors, the Carter administration, in September 1980, started to take initial steps to revise these rules. I emphasize that to indicate that there are others beside us that felt that some carefully crafted changes in these regulations would be necessary and desirable.

In December 1980, they sent out a notice on regulations and interpretive rules and policies, and asked for responses. When we took office, we undertook our review process. We distributed over 1,500 copies of a briefing paper and we asked for public comment.

After 19 months of intensive discussion and the review of over 3,000 separate items of correspondence and analysis as provided to the Department, we published our notice of proposed rulemaking. I would emphasize that we consider at this point, we are at the midpoint in the review process. I cannot emphasize this too much.

We have deliberately chosen a longer than usual comment period, and we are holding hearings across the Nation in nine different locations. We are sincerely seeking meaningful thoughts and comments and we hope that out of these, we can get some more input that will be helpful to us as we move to a final proposed rulemaking step.

Very quickly, Mr. Chairman, I would like to summarize some of the proposed changes.

Our proposed regulations do several things. They attempt to ease the paperwork and the administrative problems while maintaining requirements that are essential to insure protections for children and parental involvement.

For example, a paperwork burden of maintaining detailed documentation of attempts to notify parents is removed, and the requirements detailing precisely the content of that notification are deleted. We delegate that out to the States and local authorities.

But we do not, however, abandon the requirement that parents have an opportunity to participate in the individualized education plans. This participation is maintained in the requirement that parents be fully informed of their rights.

Our proposed regulations limit the requirements for attendance at individual education planning meetings to those persons that are required by the statute. But we would emphasize that other persons may attend the IEP meetings at the discretion of either parents or the school. We did not do that because we wanted to restrict those that are in attendance, but when we put out a rule from the Federal level that is nationwide and touches 16,000 different school systems in 50 different States, we need to try to allow some flexibility in situations where a student may have a very mild handicap, like a minor speech impediment. In those cases, we do not think we need the massive attendance of many specialists at an IEP meeting that may be necessary for another youngster when we need to have every possible person there.

Our multidisciplinary evaluation rules were changed largely for this same purpose. We continue to require multidisciplinary evaluations of all children with severe, multiple or complex disorders, including specific learning disability.

In addition to that, they require that each child's evaluation be sufficiently comprehensive to diagnose and appraise the child's suspected impairment. But we did not feel it appropriate to have a national mandate for a multidisciplinary evaluation of every child.

Now, our studies indicate that in many cases a full array of professionals is not needed to diagnose a minor impairment. For example, in numerous cases where there are minor speech problems, it might be better, not to have quite as strict a rule. But we do, I would emphasize again, require multidisciplinary evaluation in cases where the handicapping condition is more serious and more complex.

We proposed to change the time lines in the regulations. These proposals have been designed to expand protections for handicapped children in some cases. For example, States will be required to adopt reasonable time lines for the interval between the child's identification as being potentially handicapped and the evaluation of the child.

We have also proposed to expand the time lines for due process hearings. We have extended them from 45 to 60 days on the local level and 30 to 45 days on the State level. We made that change in response to considerable input where we have found that overly strict time lines had forced us into adversarial situations and impeding the due process. We felt that these rigid time lines needed just a bit more latitude. We did not want to abandon them completely.

I might just comment that in 1980, out of 4,200,000 children covered by this act, 1,166 went to due process hearings at the local level. Over 85 percent of the hearings were not concluded within the current time lines. The directors of special education and others felt that they needed some relief from this rigidity. We wanted to avoid unduly short time lines that were making it difficult for mediation and conciliation procedures to take place.

We do feel that the expanded time lines will allow for mediation and thus reduce, we think, the adversarial nature of the due process hearings. I might just tell the committee that there has been an enormous amount of litigation involved in this legislation. To the extent that we can keep that down, we will have money that we can spend for the education of children that otherwise would be going into legal fees.

We made some changes in our definitions of related services. It was of particular concern that those related services that ought to be paid by medical authorities and medical budgets should not come out of the hard-pressed education budget.

But we do require the provision of medical services that are necessary for diagnostic and evaluation purposes.

Under our proposed rule, handicapped children are provided special protection against discipline for behavior which was caused by the child's handicapping condition. If the handicap is not the cause of the misconduct, then the handicapped child will be treated like the other children. But if it is related to the handicapping condition, we would emphasize that for the first time, our regulations will protect the child.

Our regulations established some changes in the least restrictive environment requirement. At present, 93 percent of all children have been placed in programs in regular school settings, and 68 percent of them are in regular classes. We believe that the modifications in the regulations that we propose will promote even greater integration of handicapped students with the nonhandicapped.

For example, we have deleted the requirement that each school district maintain a continuum of alternative placements. We believe that this provision may have worked to encourage placement in a more restrictive environment simply because these restrictive alternatives were in place.

In my review of these regulations, I learned a great deal about the requirement in the regulations for a continuum of alternative placements, and we are convinced that the rule is a bit too heavy now and that handicapped children will benefit from this change.

The previous regulations and the guidelines accompanying them refer to problems where children disrupt classrooms when they are placed in the regular classroom. We think that the prime consideration in this regard has to be for the handicapped. There was some reference to this in the previous guidelines. The past guidelines have treated disruption but in an unclean manner. We have tried to clarify a situation that we think is causing a lot of difficulty and a great amount of litigation. So, we think our rule in that regard is also going to be helpful.

Then, finally, studies and reports conducted by the General Accounting Office have shown a sizable increase in the number of children identified as learning disabled. We believe that this strong criticism from GAO that far too many people are being placed in LD classes is fully justified.

Our proposed regulations make changes in the eligibility criteria which are intended to encourage and stimulate States to establish more rigorous standards to prevent the classification of children as learning disabled where they either have some other impairment or they are not impaired and should not be in special education classes at all.

The proposed regulations exclude from this category children whose learning problems are primarily the result of inappropriate instruction, lack of readiness or motivation, delayed maturation, or factors external to the child.

That, Mr. Chairman, is a brief and hasty summary of some of the proposals that we have for changing the regulations. I would emphasize in concluding that we need to keep in mind that the responsibility for policymaking and direction and control of these programs is under the local school board and under State authorities and under State legislation. We need to look at the State and local laws and State and local school board policies. It is a very complex, highly decentralized system.

We wanted to maintain the commitments in this statute, and at the same time, we wanted to recognize the authority and the responsibility, mandated in the statutes that created the Department, that we not unduly interfere with the rights of local and State officials. In doing that, we wanted to maintain the commitment that we know this committee has and that we have for handicapped children.

Now, that takes a considerable amount of wisdom. We have spent a lot of time on these rules. I would emphasize to the committee that I have spent my entire life in education. I have spent many, many days of that lifetime in working on behalf of handicapped children, and I would not knowingly do anything that I felt would take away from that responsibility.

At the same time, I have worked as a chief State school officer; I have worked as a local school superintendent. I have a lot of respect for the good judgment and the compassion and the wisdom of those officials. We need to keep in mind that we cannot mandate every single specific jot and tiddle out of Washington on how we manage the schools that are out there, where we have 16,000 school districts, 50 different State education systems with State legislative requirements, and a very complex, highly decentralized system.

Thank you very much, Mr. Chairman. We will be pleased to respond to questions.

[The prepared statement of Secretary Bell follows:]

### Statement of

### T. H. Bell, Secretary of Education on Proposed Regulations under P.L. 94-142, Part B of the Education of the Handicapped Act

I welcome the opportunity to discuss with you the importance of education for the handicapped. Let me make it clear at the outset that the overriding interest of the Department, and my own personal commitment, is to ensure that every handicapped child in this nation receives a free and appropriate public education. I strongly believe that the commitment which we undertook in P.L. 94-142 to educate our nation's handicapped children marks both our compassion and our determination that handicapped individuals should be a part of the mainstream of American life.

Commitment to educational rights for the handicapped was the first pillar on which we built our analysis of the regulations under P.L. 94-142. The second is our confidence in the education system of the nation. We believe in our nation's schools and in the thousands of dedicated individuals who work to educate the nation's young people. We have faith in the wisdom, the compassion, the experience and the judgment of our teachers, school administrators and school board members. There are approximately 16,000 local education agencies throughout the country, each of which has a board, administrators, and teachers dedicated to providing a quality education to all children in the school district. We do not believe that all of the virtue, wisdom, and good intention relating to handicapped students resides in Washington, D.C. The commitment to the handicapped is evident throughout the nation -- as illustrated by the fact that all 50 States have special laws providing for education of the handicapped. Many States had laws protecting the educational rights of handicapped children long before the Federal statute was passed in 1975. As we examine regulations on the Federal level, we must keep these laws in mind. Our rules must be designed to harmonize with State laws that also protect handicapped children.

In creating the Department of Education, the Congress specifically provided that "the establishment of the Department of Education shall not increase the authority of the Federal government over education or diminish the responsibility for education which is reserved to the States and the local school systems." In addition, the Congress provided that "It is the intention of the Congress...to protect the rights of State and local governments and public and private educational institutions in the areas of educational policies and administration of programs...". We have faith in our nation's schools and strongly believe that the Department must stay within its mandate not to interfere with the rights of the State and local governments and school systems.

The third pillar on which we built our analysis is contained in President Reagan's Executive Order 12291. We share the President's philosophy that the Federal government should not impose overly prescriptive, intrusive, and burdensome regulations which cause unnecessary paperwork and divert time and attention from the essential purpose of the Act -- providing education to meet the unique needs of handicapped children.

Finally, our analysis was based on the belief that the Congress is the law-making branch of the government and that the executive branch should follow statutory provisions closely and carefully. We have carefully examined the statutory language and the legislative history and have attempted to conform our regulations to the intent of Congress.

The existing regulations for P.L. 94-142 were published five years ago when we had little experience with the legislation. It was always recognized that the regulations would need to be revised as the nation's school systems gained experience in implementing the concepts and procedures contained in the regulations. The publication of the Notice of Proposed Rulemaking we are discussing today is a major step in this extensive review which began in 1980. In December 1980, the previous Administration published a notice of intent to publish regulations, interpretative rules, or policy statements which elicited over 300 responses from a wide range of interested parties. This Administration built on this review process, and distributed more than 1500 copies of a briefing paper requesting further public comment. After 19 months of intensive discussion, and the review of more than 3,000 separate items of correspondence and analysis provided to the Department, we have published a Notice of Proposed Rulemaking which would amend the regulations.

I emphasize that the publication is a mid-point in the review process. We have deliberately chosen a longer than usual comment period of ninety days in order to invite the widest possible public participation in the review process. In addition, we are holding a series of nine public hearings and briefings throughout the nation. We have conducted, and will continue to conduct, extensive briefings with interested groups and individuals and have established a special task force in the Special Education Programs office to review all comments received. We are open and we are seeking the widest possible input. We will consider the comments fully and will make necessary changes before publication of a final regulation. We hope that those who participate in the process with us will make meaningful and thoughtful comments, and that the discussions can be conducted in an atmosphere of mutual trust and respect for varying points of view.

We look forward to working with interested individuals around the nation on these regulations. We believe they faithfully carry out statutory purposes, that they improve the process, that they will ensure appropriate benefits and protections for handicapped children, and that they will promote greater efficiency and flexibility for those charged with administering these important educational programs.

I want to discuss with you some of the proposed changes we have made and outline reasons for their inclusion in our NPRM.

The statute establishes the "individualized education program" (IEP) as the cornerstone of the provision of special education and related services for each handicapped child. Over the years, comments from the field and program monitoring reports have brought to light some problems in implementing the present regulations on the IEP process. The proposed regulations attempt to ease the paperwork and administrative problems while maintaining requirements essential to ensure protection for children and parental involvement. For example, the paperwork burden of maintaining detailed documentation of attempts to notify parents is removed and the requirements detailing precisely the content of that notification are deleted. However, the proposed rules are consistent with the statutory requirements that parents have an opportunity to participate in the IEP process and that they be fully informed of their rights. Our proposed regulations emphasize the flexible and cooperative process of developing a handicapped child's educational program.

The Department has received complaints that the large number of individuals who attend IEP meetings leads to nonproductive and time-consuming meetings. Our proposed regulations provide that attendance at IEP meetings need not include persons other than those required by the statute. However, it should be emphasized that other persons may attend the IEP meeting at the discretion of either the parents or the school.

Our proposed regulations would continue to require multidisciplinary evaluations of all children with severe, multiple, or complex disorders, including a specific learning disability. Moreover, they would require that each child's evaluation be sufficiently comprehensive to diagnose and appraise the child's suspected impairment. However, in recognition of sound education practice and the shortage of highly trained professionals in evaluation, we did not feel it appropriate to have a national mandate for multidisciplinary evaluation of every child. Our studies show that in many cases a full array of professionals is not needed to diagnose a child's impairment. For example, in most instances, speech-impaired children can be appropriately diagnosed by a single specialist in the area of speech therapy. Under our proposed regulation, the time of other professionals, needed for evaluation of children with complex problems, could be devoted to those children.

The proposed regulations would add provisions designed to expand protections for handicapped children. For example, States would be required to adopt reasonable timelines for the interval between a child's identification as being potentially handicapped and the evaluation of the child. We believe this requirement will help curtail waiting lists for evaluations, and assure that children are evaluated in a timely manner. The NPRM would delete the specific Federal timeline for the interval between an evaluation and an IEP meeting and would require that States set timelines instead. We believe the States will set reasonable timelines. Greater flexibility in timelines will allow schools to make moderate adjustments and better assure that the needs of the handicapped are met.

We have also proposed to expand the timelines for due process hearings and reviews from 45 to 60 days on the local level and from 30 to 45 days on the State level. It is important to point out that it is unnecessary to go to due process procedures in the vast majority of cases. In 1980, for example, there were only 1,166 due process hearings at the local level -- at a time when 4 million students were receiving special education services. More than 85 percent of the hearings are not concluded within current timelines --thus indicating that the present rigid and short timelines do not, in fact, work in practice. Additionally, the short timelines make it difficult for mediation and conciliation processes, which we encourage, to come into play. We feel that the expanded timelines will allow for mediation and thus reduce the adversarial nature of the due process hearings and reviews.

A controversial area in the administration of P.L. 94-142 has been the definition of "related services." As you are aware, the statute excludes most medical services from the definition of "related services." It is a particular concern of mine that education dollars be used for the education of students -- not for medical care. This is not to downgrade the need for good health care. Healthy students are essential for learning. However, it is important that education budgets --scarce as they are -- be spent for learning. The NPRM carefully defines medical services as those services relating to the practice of medicine, and looks to the State medical licensing authorities for a determination of what constitutes a medical service. The statute requires the provision of medical services that are necessary for diagnostic and evaluation purposes. The regulations would also require schools to provide clean intermittent catheterization where it is necessary to allow the child to benefit from special education and where it is not regarded as a medical service under State law. Mental health services are not categorically excluded as "medical services" since some such services may constitute counseling or psychological services or other developmental, corrective or supportive services required by the Act. On the other hand, certain services, such as the administration of psychoactive drugs and electroshock therapy would very likely fall within the practice of medicine, as determined by the State medical licensing authorities.

For the first time, the regulations would deal with disciplinary procedures. Under the NPRM, handicapped children would be provided special protection against discipline for behavior which was caused by the child's handicapping condition. Persons familiar with the child and the behaviors associated with the handicapping condition would be involved in determining whether there is an association between the behavior and the handicap. We believe that this regulation will clear up some confusion about disciplinary standards -- confusion that has led to costly and complex litigation in State and Federal courts. If the handicap is not the cause of the misconduct, the handicapped child would be treated like any other child.

The requirement established by the Act to educate handicapped children with non-handicapped children to the maximum extent appropriate is unaffected by the proposed regulation. At present, 93% of all handicapped children have been placed in programs in regular school settings. A majority, 68%, are in regular classes. We believe that our proposed modifications in the regulations will promote even greater integration of handicapped students with the non-handicapped. For example, we have deleted the requirement that each school district maintain a "continuum of alternative placements"; we believe that this provision may have worked to encourage placement in a more restrictive environment simply because these more restrictive alternatives were in place. It is our feeling that under the proposed regulations schools will continue to place students in a variety of alternative placements, but the placement decisions will be more individualized.

The Department believes that in enacting P.L. 94-142, Congress was not unconcerned with the education of non-handicapped children, though its focus was on those who are handicapped. We have proposed a regulatory provision which would require the school to consider a handicapped child's placement in light of any potential harm to the child and allow it to consider the child's placement in light of any "substantial and clearly ascertainable disruption" of the educational services provided to other children in the same class. This provision would clarify a comment in the existing regulations in a way that will further protect handicapped children. A new guideline in the NPRM makes clear our intention that this provision is to be narrowly construed and is to be applied only in very limited circumstances. Clearly, the placement of a handicapped child outside a regular class is not warranted, for example, where the adverse effect on other children is speculative or relates only to isolated incidents of disruption. A study conducted by Applied Management Sciences in 1980 indicates that most schools consider the effects on other children. The study showed that student behavior was the fourth most frequent factor of twenty-eight considered by committees in determining placements for handicapped children. The proposed regulation will provide clearer standards for defining disruptive behavior that can affect regular class placements.

Finally, studies and reports -- including one recently released by the General Accounting Office -- have shown a sizable increase in the number of children identified as learning disabled. We believe that the strong criticism from GAO that far too many children are being placed in LD classes is fully justified. The proposed regulations make changes in the eligibility criteria which are intended to encourage and stimulate

States to establish more rigorous standards to prevent the classification of children as learning disabled where they either have some other impairment or are not impaired and should not be placed in special education programs. The modified criteria would provide that the discrepancy between a child's achievement and ability must be severe and verified, and must be the result of one or more of the serious and identifiable conditions specified in the statute. The proposed regulations would exclude from this category children whose learning problems are primarily the result of inappropriate instruction, lack of readiness or motivation, delayed maturation, or factors external to the child.

I know you will want to discuss other issues from the regulations and I welcome the opportunity to expand on our purpose and rationale for any of the proposed changes we have made.

Senator WEICKER. Thank you, Mr. Secretary.

What I would like to do now before we get to the questions is: I know that there are members of the committee that have opening statements to make. I would like to get to those next. Normally, I would go to my good friend, Senator Randolph.

Senator, Senator Stafford apparently has to chase out to chair a hearing.

Senator RANDOLPH. He does not have to chase, but he has an obligation in another committee that I also have an obligation to go to. But I would certainly agree with you to defer to our chairman of the Environment and Public Works Committee.

Senator WEICKER. If I could have, then, Senator Stafford and then Senator Randolph, and then I will proceed to Senator Hatch and Senator Kennedy.

## OPENING STATEMENT OF SENATOR STAFFORD

Senator STAFFORD. Mr. Chairman, I thank you very much for that. Indeed, I should have been chairing the Environment and Public Works Committee on the clean air markup at the present time, so I am very appreciative of your courtesy and that of Senator Randolph, whom I hope I will see later on in the other committee.

I am happy to welcome the Secretary of Education here today. I know of his outstanding career in education and I believe him when he says he has done much for education in all forms. But today, I guess we have to, as we have sometimes on a friendly basis, disagree.

As one of the primary sponsors of the landmark Education for All Handicapped Children Act, I find the changes proposed for its administration by the Department of Education to be a tremendous disappointment. The proposed regulations would, in the judgment of this Senator, seriously erode the rights and protections afforded handicapped children and their families.

In addition to the reductions in guarantees to handicapped children in our public schools, the changes offered have another severe failing. They ignore an opportunity to remedy difficulties that educators are facing in providing a free, appropriate education to more than 4 million handicapped youngsters in this country.

I was pleased to have been involved in the development of Public Law 94-142 with the most able Senator from West Virginia, Senator Randolph, and have monitored closely the law's implementation since passage in 1975. Numerous hearings conducted by the Senate have convinced me that the law does work and that it has played a significant role in providing opportunities to handicapped children and their families.

Hearings by this Senate Subcommittee on the Handicapped, in which I have participated, have demonstrated that there are issues which need to be addressed through regulatory reform. These items include better definition of what constitutes related services, and better guidance in regard to participation by private schools.

Issues such as these have been brought before this subcommittee by a variety of witnesses. No one, however, has appeared before us to call for fundamental reductions in the rights and protections guaranteed by Public Law 94-142 to handicapped children and their families.

It is unfortunate, in the view of this Senator, that the Department of Education has chosen to address the wrong issues with this set of proposed administrative revisions.

I would appreciate the views of the people of Vermont, and indeed those across the country, about these proposed regulations. My advice to the Department of Education is that these changes be withdrawn, to be replaced by a set of regulations that truly address the problems confronting school officials and the children the act is designed to serve. If no replacement regulations are forthcoming, this Senator will strive to retain the rules that are now in force.

Mr. Chairman, I have a series of questions here that would be better answered in writing, and I would ask unanimous consent that at the appropriate time in these hearings, they might be submitted to the witnesses for response in writing.

Senator **Weicker**. That will be so ordered, and thank you very much, Senator Stafford.

Senator **Stafford**. Thank you very much, sir.

Senator **Weicker**. Senator Randolph.

Senator **Randolph**. Thank you very much, Mr. Chairman. I have a very brief statement and I will try to hurry through it so that I might ask one question.

Senator **Weicker**. I think, Senator, that what I would like to do, because Senator Hatch is also here, is we would like to have the opening statements, and then for the first question after that, I will be glad to defer to my good friend.

Senator **Randolph**. You are very helpful.

I do want to call attention to the interpreter for the deaf, Dr. Joseph Rosenstein, who is here today. He is one of the very best in this field.

Secretary **Bell**. A Department of Education employee, Senator Randolph. We are proud of him.

Senator **Randolph**. Well, you are wanting to do away with the Department of Education. [Laughter.]

Secretary **Bell**. We would presume he would still be an employee of the successor entity, Senator Randolph, and would be equally as valuable in that capacity.

Senator **Randolph**. Thank you, Mr. Secretary. Well, we got off on a good note. [Laughter.]

Good morning to our witnesses and guests. We are here to receive testimony on a very important law—the Education for All Handicapped Children Act of 1975, Public Law 94-142. This law has brought about many improvements in special education services for this Nation's handicapped children. As one of the authors of this law, I am concerned about any changes which might result in all handicapped children not receiving quality special education services. In 1975, we all worked very earnestly to insure that the educational rights of handicapped children would be protected by a strong Federal law.

I am worried about regulatory changes that will adversely affect quality educational opportunities for handicapped children or that will result in all handicapped children not being served as the title of this law mandates.

During the 95th and 96th Congresses, the Subcommittee on the Handicapped, which I had the privilege to chair, held 13 of our 33 hearings on the subject of Public Law 94-142. Our witnesses, which included parents, teachers, local, State, and Federal program administrators, and organizations representing professionals and advocates, raised certain issues relating to the administration of this law. It was my hope that when regulatory changes were made they would address the issues raised during these hearings. In a preliminary review by my staff, it appears that this is not the case. I have asked my staff to confer with parents, teachers, administrators, professionals, and representatives from advocacy organizations to analyze these revised regulations to determine the impact on the quality of special education services or on the number of handicapped children receiving services. We will also be studying these revised regulations carefully to assess any lessening of Federal, State, and local responsibility to provide a free appropriate public education as originally intended by the Education for All Handicapped Children Act.

Mr. Chairman, I will have questions for Secretary Bell to be answered for the hearing record, but, if it would be agreeable, I do have one question for Dr. Sontag now. It is only one question; then I could go to help make the quorum in the other committee.

Senator **Weicker**. Senator, you have extended so many courtesies to so many of us over the years that the least we can do is let you go at it for one question, but I do not want you to get too emotional and get into a roaring fight here. [Laughter.]

Senator **Randolph**. No, no, sir.

Senator **Weicker**. You have got to leave that to all of us.

Senator RANDOLPH. I believe that if you must think evil of a person, never speak it; write it on the sands near the water's edge. [Laughter.]

Secretary BELL. It is hard to fight with Dr. Sontag, Senator Randolph.

Senator RANDOLPH. He has always been very helpful to us individually and to our subcommittee.

To Dr. Sontag, our question is this: In your professional judgment will these revised regulations result in, one, a reduction in the number of handicapped children receiving special education services; two, a reduction in the number of services available to handicapped children; three, a lessening of the quality of services provided to handicapped children?

I thank you very much, Mr. Chairman. Of course, I am very sorry that we have three meetings scheduled at one time. Even a young man like I am cannot make three at the same time. Thank you very much.

Dr. SONTAG. Mr. Chairman, Senator, it is a pleasure to once again appear before you. Your three questions are ones that we have used as we have examined these proposed regulations. Like Secretary Bell, I have spent a few less years but all of my professional life in the field of special education. All of my graduate and undergraduate training is in this field, from a classroom teacher to a local administrator and a State administrator.

I think we have seen an incredible commitment to handicapped children in this country. Public schools today, as a matter of public policy, no longer exclude children, but are trying to provide a free and appropriate education for every handicapped child.

My response to all three of your questions is that these regulations will facilitate better services with more handicapped children being served, and certainly on a qualitative basis. I feel very strongly about that, Senator.

Secretary BELL. Senator, I did not twist his arm for that response, either, if I may say jokingly to you about that.

Senator RANDOLPH. Surely.

Secretary BELL. We have worked on this together. We believe that these rules are going to be beneficial. There may be some instances as we review where we will find we have erred. If I may, Mr. Chairman, I would like to ask for an opportunity to have your staff members come down to the department and let us spend a couple of hours with them and go over some of these highly technical details.

I do not think you will feel our changes are as monstrous and damaging as you perceive them to be now. In the places where we do determine that there are going to be some problems I want to work with this committee, Mr. Chairman. We do not want to harm the educational benefits of these children. Excuse me for interjecting there.

Senator RANDOLPH. I want to say, Mr. Chairman, that I think the offer of Secretary Bell is commendable. Certainly, we have tried with our personal staff to work with Dr. Sontag and others in these matters. I have never said that the proposed changes are monstrous; you used that word.

Secretary **Bell**. I know that, Senator. It was probably an unfortunate term on my part.

Senator **Randolph**. Yes, sir. I have said that I am very concerned about certain matters, and that concern is a very genuine one.

Mr. Chairman, I appreciate your courtesy to me.

Senator **Weicker**. Thank you very much, Senator Randolph.

Senator Hatch?

### OPENING STATEMENT OF SENATOR HATCH

Senator **Hatch**. I am very happy to welcome you, Mr. Secretary, and your colleagues with you here today to participate on this panel with the discretion of our chairman.

One of my first assignments as a freshman Senator during the 95th Congress was as a member of the Subcommittee on the Handicapped. Since that time, I have witnessed a steady growth toward implementation of Public Law 94-142, the Education for All Handicapped Children Act—a growth so remarkable that we now can serve over 4 million handicapped children throughout the Nation.

Today, we are here to begin reexamining how well the law and its regulations are working. In my home State, and yours also, of Utah, nearly 35,000 handicapped children have been identified and educated this past year under Public Law 94-142. Although we have made great strides toward meeting the needs of our handicapped children, I think there is still room for improvement.

When the regulations were originally published, parents and school systems had limited experience in promoting the mandate of the statute; that is, to provide free and appropriate public education for our handicapped children. Now that we have had 5 years of experience with the law, it is time, I think, to review its strengths and weaknesses.

Examining the regulations which define the complex facets of Public Law 94-142 is no easy task. It will be a difficult and time-consuming assignment. In light of this challenge, my colleagues and I on the Labor and Human Resources Committee requested an extension for the comment period from 60 to 90 days. I want to commend you, Mr. Secretary, for granting this extension, and for also scheduling the regional hearings to allow for full public participation in the process.

In Utah, my own personal advisory committee on the handicapped will be assisting me with the immense task of reviewing these proposed regulations. Composed of parents, handicapped individuals, and representatives of public agencies serving handicapped individuals, they hopefully will be able to not only point out the problems with the proposed regulations, but also to recommend any viable alternatives.

As consumers and providers under current Public Law 94-142, they are in a unique position to help develop an equitable and reasonable balance between the rights of handicapped children to an education and the capacity of a school system to provide such services.

Federal, State, and local agencies have indeed provided special education and related services to more handicapped children than ever before. However, it would be a gross injustice for us to be content with just maintaining the status quo. We must develop additional solutions to deal with the problems still remaining in providing high-quality educational opportunities for our handicapped children which will make them more self-sufficient, more skilled and most accepted as functioning members of our society.

Hopefully, we will respond to this new challenge in a positive and productive manner as we begin the review process and examine the proposed regulations for Public Law 94-142, the Education for All Handicapped Children Act.

I am very delighted to have you here today and to talk with you about these matters. Of course, I am delighted to have your colleagues, who are experts as well.

Secretary **Bell**. Thank you, Senator.

Senator **Weicker**. Thank you very much, Mr. Chairman.

Senator Kennedy?

Senator **Kennedy**. Thank you very much, Mr. Chairman. First of all, I want to express our appreciation to you for calling these hearings on a matter as important to handicapped children as this is. I think all of us recognize the very effective work that you and Senator Randolph have done for handicapped children.

I want to thank Mr. Bell for being here today. I also want to commend him for his willingness to discuss these matters before this committee, and for his willingness to work with the members of the committee to reach out to individuals across this country to get their reactions to the proposed changes.

I think that those of us who have listened to Mr. Bell and know of his experience recognize that he has devoted a lifetime to education and been has concerned about these types of issues. We know the strength and the basic integrity from which those comments come. So, we welcome you here, Mr. Bell.

Secretary **Bell**. Thank you.

Senator **Kennedy**. That recognition does not as you might imagine, necessarily put us in complete agreement on some of the matters which are before our committee here today.

I have heard the President of the United States often say: If it is not broken, why fix it? What I am hearing from my own State of Massachusetts—a State which has demonstrated a very deep commitment to the handicapped children and developed a wide range of experience in this area—is that the existing regulations are effective. Quite frankly, I think this is a burden which you must overcome when you propose these changes.

Another burden that you must overcome is the demonstration of real sensitivity by this administration for the problems of handicapped children. The administration, in its efforts to block grant the programs, did not really give a very careful evaluation of the effectiveness of the handicapped programs generally. Nor did it do so when it recommended a 25-percent reduction in support for Public Law 94-142.

The resistance to the block grants was achieved primarily by the efforts of this subcommittee, particularly Senator Weicker and Senator Randolph. This resistance was based on the concern—and it is one of the basic concerns that I have—that when you have a small group benefited by a high-cost program and you turn this back into the local communities, by and large those groups lose out. Now, I know that some of my colleagues might differ with me on that. But I would dare say that history bears out my conclusion.

This is not to suggest that there are not people in local communities that are more knowledgeable than we are, more concerned than we are, or more compassionate than we are on this and other issues. The hard political reality has demonstrated that all too often the small group nonetheless loses.

I will just mention very briefly because I know the Chair wants to get on with the questions—the two areas which concern me most deeply: the changed role for the parents and the issue of related services in this program.

The first issue concerns me very deeply, I think, both as a public policy question and also from a personal point of view. I had a parent who was actively involved with a handicapped child, I also have a child myself who might be considered handicapped with the loss of a limb. To the extent that you alter or vary the parent's role, I think you have to be on very firm ground. I think that it is extraordinarily important in these hearings and the hearings that you are going to have around the country to hear from the parents particularly on this issue.

The second issue is the related services issue. I know that you have given attention to it and you have commented on it and testified to it this morning, but I remain very much unconvinced on that particular issue.

There are others, but I will, if I can, Mr. Chairman, ask that my full statement be placed in the record at this point. I would also like to ask that the questions that I have addressed to Mr. Bell be submitted for his responses in writing and that they be made a part of the record.

We welcome you here.

Secretary **Bell**. Thank you, Senator.

Senator **Kennedy**. As I said earlier, I do not doubt your own basic, fundamental commitment to these public policy objectives. Nevertheless, I think there are those of us who have some very deep concerns as to whether these objectives can be achieved by the recommendations that you have made. I thank you very much for your appearance.

### Opening Statement of Senator Kennedy

Senator **Kennedy**. Mr. Chairman, let me begin by commending you for calling this hearing to discuss the proposed changed in the regulations implementing Public Law 94-142. When Congress enacted this law, the Education for All Handicapped Children Act, in 1975, it recognized that the educational needs of handicapped children in America had been ignored for too long. To remedy this inquity, State and local education agencies were directed to provide handicapped students with meaningful access to an education. They were required also to integrate these students into mainstream classroom activities. In support of these efforts, the Federal Government last year provided over $1 billion.

Since the passage of the act and the establishment of regulations implementing the protections of that act, the educational prospects of handicapped children have measurably improved. In Massachusetts last year, over 100,000 handicapped students spent over 75 percent of their school days in a regular public school classroom. In my opinion, the act and the current regulations have worked without placing an undue administrative burden on the schools or the States.

The administration now proposes an extensive set of changes in these regulations citing a need for "streamlining and deregulation." Let me say that I am a supporter of easing the administrative burdens on State and local governments and on the people, and deregulation is as much a Democratic initiative as it is a Republican issue. But when deregulation involves a retreat from protections for the American people and their rights, I get very concerned. We must not streamline to save a few dollars at the cost of human rights or human lives. That is why the Reagan administration bears a heavy burden when they propose these regulatory changes. They must show that these changes are necessary. They must show that they will retain an effective program. They must show that they are in the best interests of the 4 million handicapped students in this Nation, as well as the States and the schools.

I must admit that this administration's earlier actions have not filled me with confidence in their understanding of the problems facing handicapped Americans. The proposed cut of 25 percent in the funding for Public Law 94-142 is not an act of a protector of handicapped students. Their protestations that handicapped students will not suffer under these proposed changes thus ring just a little bit hollow.

Nevertheless, I do want to commend the Department of Education and Secretary Bell for openness during the consideration of these rule changes and since the publication of the proposed changes. They are attempting to solicit extensive public comment and input into the process. For this, they are to be congratulated. I am confident that they will give the serious concerns and criticisms raised by many interested observers, as well as by Members of Congress, significant consideration.

I would like to briefly outline my general concerns regarding this proposal in the hopes that the Secretary may be able to address them later in the hearing. My greatest concern revolves around the reduction of parental invovement at the local level. In my view, parental involvement is crucial to the effective operation of the program. A distance of the parents from the program will not only undercut public confidence in the program, but will also diminish the ability of the program to respond to individual needs. The parental involvement provisions in the regulations and the legislation are an example of true local control. The proposed changes would increase the authority of school officials at the expense of the truly concerned parents. It would also diminish the strength of the family by excluding it from the decisionmaking. In my opinion, the family is too important to be excluded like this.

A particular concern along these lines is the denial of procedural protection insuring parental input into important decisions relating to the child. The parents provide essential nongovernmental oversight of the activities of local school officials. They are able through these procedural protections to improve the operation of the program while at the same time relieving the oversight burden on the Federal Government.

Second, the proposal would increase local discretion in the provision of important services. Many of the school health, social work, and parental counseling services are essential for some students to receive an appropriate and meaningful education. This action sends a message to local school officials that these services are no longer so important. Such a message can be devastating to handicapped students.

Moreover, the increased discretion provided to local school officials here and in the placement of handicapped students could turn the clock back to the days prior to the passage of the act. The act was passed because many local school officials and State agencies ignored handicapped students, as they ignored so many other disadvantaged groups. They took the easy way out by segregating these students in "special" classes and denying them adequate education opportunities. In my opinion, If State and local officials gain the unfettered ability to decide on placement and services, the handicapped child loses. Let me emphasize that I do not feel that local or State officials are insensitive—although some may indeed be. They are honest men and women trying to help most of their varied constituents and clients. Unfortunately, the small and politically less powerful groups requiring more expensive and extensive aid are often ignored. That is why the Federal Government became involved. That is why it must remain involved. That too is why we need extensive parental involvement. There is a role for local and State education officials, but it must be a cooperative one not an unfettered one.

I think that it is important to note that in many ways these regulations go against the grain of the recent Supreme Court decision in *Hendrick Hudson School District* v. *Rowley*. The Supreme Court strongly affirmed that the ultimate goal of the act was to provide the handicapped student with an adequate educational opportunity. The schools must provide meaningful services to the students. And to do so, parental involvment is essential.

I hope that the Department in its final regulations will consider the meaning of the Supreme Court decision and will alleviate these problems in the proposal.

In conclusion, let me say that I am quite concerned by the pattern of changes embodied in this proposal. Repeatedly this administration has sought to diminish local control over education programs by limiting parental involvement. It then attempts to increase the discretion of local and State officials, who have long ignored the problems of the affected group, by indredibly claiming a need for local control. It had cut services and administration under the guise of administrative efficiency. In my opinion, this pattern is harmful to these students and harmful to our country. The aid we give to these students, both financial and legal, is not charity nor is it welfare. Certainly they benefit, but so too does America. For we are investing in our people—our greatest resource.

Secretary BELL. Thank you, Senator.

Senator WEICKER. Thank you very much, Senator Kennedy. Senator Quayle.

Senator QUAYLE. Why do you not go to Senator East?

Senator **Weicker**. Senator East.

Senator **East**. Mr. Chairman, I appreciate the opportunity to make a brief comment or two here. First, I would like to associate myself with your introductory remarks about the progress that has been made in the country over the recent decades in this area of helping the handicapped and the great need to continue to do that.

I would like to note myself, having become disabled in 1955 and spending basically my adult life as a disabled person, the progress that has been made in this period of time is remarkable in terms of removing architectural barriers, psychological barriers, and generally in harnessing the resources of the private and public sectors in this country to try to get disabled people into the mainstream of American life.

A great deal of progress has been made; I can personally vouch for it. I saw it. I would certainly agree with the very able chairman of this subcommittee that we ought not to deter ourselves from continuing to move in that direction.

Second, I would like to welcome the Secretary here, a man for whom I have great admiration not only for his personal skills, but I have noted in my brief tenure in Washington that he is extremely professional and unflappable. I am sure he thinks "damn" from time to time, but I have never heard him say it, and that is a real trait in this city. I do personally greatly admire your work.

Secretary **Bell**. Thank you.

Senator **East**. One final comment, because I know, Mr. Chairman, you are anxious to get on with the questions. I would like to indicate personally a sympathy with what I think Secretary Bell is attempting to do here. I think we all share the same goal of continued progress and improved opportunity for handicapped people in this country, so there is no disagreement on the goal.

We certainly have all conceded here this morning that everyone is sensitive to the problem, and rightly so, and we wish to proceed in that spirit.

It does occur to me—and I would note this as a disabled person—that one thing that is unique, possibly, about working with disabled people and potential discrimination against disabled people is that in disability or handicaps, there is extraordinary diversity. In the types of handicaps—mental, physical and every other way—there is enormous, enormous diversity, and you simply cannot put it all under one rubrick or one label.

For example, with racial discrimination or sexual discrimination, generally we can think pretty uniformly about that because the situation is constant. There ought not to be discrimination based upon sex; there ought not to be distinction based upon race or whatever.

But when you get into the area of dealing with the education of handicapped children or young adults, which I have seen firsthand, I cannot underscore the importance of flexibility depending upon the type of handicap.

As I would understand the thrust of what the Secretary is trying to do, it is not to, of course, depart from the goal of helping the handicapped. What he is trying to do is to make it possible for local officials to work in a more flexible and realistic atmosphere in dealing with the great diversity that you encounter with the physically or mentally disabled.

If we do not give them that flexibility, it does occur to me, ironically, that we might be counterproductive to our own end here in which they are not able to help all of the handicapped as a group and as a whole, because they are simply unable to make the distinctions that they need to make, whether it be the very severely disabled or the moderately disabled, and so it goes.

It does not mean we could not disagree on a particular point, and I am reserving the right to do that. But I would say I think the general thrust of what you are trying to do is very consistent with the overall goal of helping the handicapped of this country.

Thank you, Mr. Chairman.

Senator WEICKER. Thank you very much, Senator East.

Senator Quayle?

Senator QUAYLE. Thank you very much, Mr. Chairman, and thank you for allowing me this opportunity to be with you and for allowing me to commend you for having these hearings.

Mr. Secretary, I certainly want to take notice of what you have tried to achieve in a very exhausting process. However, I would like to just briefly review the issue from my perspective.

At the behest of Chairman Weicker, I was one of 60 members of the Senate who sent a letter to the President in support of Public Law 94-142. Basically, the supporters, including myself, wanted to put into writing a position that would preserve the status quo. In other words, we had a protectionist position toward the special education program.

So, as we begin this debate and the discussion of the regulations, I really believe that the burden of proof and the presumption will be on you and members of your staff to show why this change should come about.

I believe that you would agree with me, and I am sure that you do, that the goal that we all subscribe to is to meet those educational needs of our Nation's 4 million disadvantaged youngsters. That is the goal; that is our objective that we want to pursue. Now, we may disagree on how to pursue that, but that is the goal.

So, as we undergo these discussions in a very deliberate manner, I would like to briefly explain some of the initial responses that I have. One of the concerns is over the existence of a large number of very general terms, such as "reasonable limitation" or "substantial and clearly ascertainable disruptive behavior" or "opportunity to participate in."

Also, another concern regards the term "disruptive behavior"—which I feel could be used to block access to regular classrooms for some disabled youngsters. Furthermore, I am almost concerned, as Senator Kennedy pointed out, with the reason for deleting the parental consent provision, which, in effect, would no longer require parental involvement before a school conducts an evaluation or places a child in an educational program.

I also notice that there is a deletion of a child being placed in classes in a place closest to their home. Now, these are all provisions, in reading them at first blush, that I have a lot of concern about.

I am sure that you will be answering many of these questions today. Furthermore, in some of the discussions that my staff will have with yours, and perhaps us individually, we will be able to clarify this.

But I do believe that the letter—and the chairman could emphasize that, I am sure, since he is the one who got me and others to sign it—is really on record in support of trying to preserve what we have right now. And as we enter into this debate, at least I, for one, am starting with the presumption that what we have now is a good thing.

Thank you very much.

Senator WEICKER. Thank you very much, Senator Quayle.

### PREPARED STATEMENT OF SENATOR QUAYLE

Senator QUAYLE. Mr. Chairman, I want to take this opportunity to express my concern over the recently proposed regulations issued by the Department of Education for the special education program.

Mr. Chairman, you may recall that I was 1 of over 60 Senators that joined you in signing a letter of support for Public Law 94-142. That letter was delivered to the White House earlier this year and its supporters advocated a protectionist position toward the special education program. The letter sought full funding for the program and opposed any changes that would dilute the effectiveness of the present program.

I believe the new regulations, should they be enacted into law, would seriously jeopardize the original intent of the law, which is to meet the educational needs of our Nation's 4 million disabled youngsters.

One of my major concerns is over the existence of a large number of very general terms, such as "reasonable limitation"; "substantial and clearly ascertainable disruptive behavior"; and "opportunity to participate in" which leaves the interpretation of these terms up to individual discretion.

Under the proposed regulations, a disabled child deemed "disruptive" to other children in the classroom can be removed from class. Now, if I had to leave or enter a room in a motorized wheelchair, some people in the class might be disrupted. And a child with cerebral palsy might be ruled disruptive because the physical manifestation of their handicapping condition might be visually distracting to others.

I am concerned that these undefined general terms may act as a detriment for some of our disabled youngsters in their efforts to receive an education in a regular classroom setting. This flies in the face of the intent of this legislation. That is, to pursue the goal of having as many of our handicapped children receive their education in regular classrooms.

On another front, I was upset to see that parental consent would no longer be obtained before a school conducts an evaluation or places a child in an education program. Nor would the disabled child be placed in classes that were closest to their home. Considering the great stress that having a disabled child in a family poses to the parents, I believe we should do whatever we can to support the family unit, not discourage it.

Should these regulations be passed, they would hinder Congress in their effort to conduct oversight and evaluation of the special education program. We will no longer receive information about the numbers of children needing special education or estimates of the children who are waiting to get into special education classes. Many disparities exist as to how many disabled children are actually receiving needed services. It would be impossible to conduct the necessary oversight should these changes go into effect.

I have a number of additional concerns, Mr. Chairman, such as the deletion of school social work services from the related services, and the proposal to no longer hold schools responsible for providing extracurricular activities to these children. In the interest of time, I will hold my comments until late in the hearing.

Senator **Weicker**. Let me start at that point, if I might, Mr. Secretary, and be even more specific as to why there might be an uneasiness on the part of this panel and others in the disabled community as to what it is that you are truly trying to do here.

Again, let us use the Senator from Indiana's term; let us review the bidding as to what it is that this administration has done. The administration came to the Congress in 1981 and, in effect, tried to repeal Public Law 94-142 via the block grant route, and that was rejected.

In fiscal year 1981, the administration requested a recission by 25 percent of funds in this area. Congress approved a cut of 5 percent. For fiscal year 1982, in February 1981, they requested a cut of 25 percent via reconciliation. Congress approved an increase of 5 percent in the authorization level. In September 1981, the administration requested a cut of 33 percent from the reconciliation level. Congress approved a cut of 4 percent, which resulted in an increase in appropriations of 6 percent over the previous year. In February 1982, the administration requested a 28 percent recission, which the Congress rejected. For fiscal year 1983, it requested a 30 percent reduction, and Congress rejected it in the fiscal year 1983 budget resolution. The appropriations for 1983 have not yet been established.

In addition to that, at the outset of this administration at hearings which I held—and I believe my questions were directed at Jean Tufts—I questioned on many occasions as to what the rumored activity was in the Department of Education relative to altering Public Law 94-142, and was assured at the outset that indeed that was not going on, and then I was told that it was going on.

So, this is the record, both in terms of funding and in terms of concept, that has been the bidding, if you will, prior to your appearance before this committee. What in that record should give us any confidence that, indeed, you are trying to go ahead and enhance the rights and the opportunities of the retarded and disabled?

Secretary **Bell**. Well, I would not want to mix funding levels and budget problems with what the Public Law 94-142 requires.

Our administration has long advocated block grants. When you move to a block grant, as was indicated by the one that we now have passed, you do not necessarily have to repeal all the statutes that precede them.

Title I is part of the block grant legislation. We have, in that process, delegated considerably more authority and decisionmaking responsibility to State and local education agencies, and we have taken less of that responsibility unto ourselves.

However, the prime protections and guarantees for students in title I programs are still in that legislation.

Senator **Weicker**. Well, of course, in title I we are talking about the disadvantaged.

Secretary **Bell**. That is true.

Senator **Weicker**. And thanks to Senator Stafford, the proposal is no more today than what it was when it was submitted by the administration. I would like to keep it to what we are talking about here.

Secretary **Bell**. You were saying that the fact that we proposed a block grant for the handicapped would wipe out all the protections for the handicapped. The point I was making was that that has not been our intent, just like we did not wipe out all the protections for the disadvantaged when we passed that block grant.

Senator **Weicker**. What I was trying to do, Mr. Secretary, was to give a reason for the uneasiness which is prevalent among this committee and the handicapped community as to what you are trying to do here.

When you say that what we did in the funding area has nothing to do with what we are trying to do conceptually here, that is just out of reality. I think it has a great deal to do with it. Obviously, an administration that is cutting back on the funds available to the retarded and the disabled is hardly committed to their best interests.

Now, it might be that they are budgetary considerations; I do not argue that point. But there are some of us who feel that budget cuts should be imposed upon the strong and the healthy and not on the weak and the disabled. So, I think we feel there might be somewhat less of a commitment to these people.

When that is accompanied by changes in the concept, obviously there is an uneasiness that takes place and it seems to be well justified.

Secretary **Bell**. Well, I do not question the uneasiness about it. I came with a budget last time around that was down to a total for the Department of $10 billion. That was my budget allowance from OMB; that was down from $14,900,000,000. The percentage cuts that I proposed for the handicapped were lower than the others, because I share the same concern that the rest of you have for education of the handicapped.

Senator **Weicker**. Well, that brings me to the last part of this particular question and then I am going to keep the questions short so that as many can ask them as want to.

Since, apparently, the cuts in funding for the handicapped were precipitated by budgetary considerations rather than considerations that attach to the needs of these people, how much of the reasoning behind these regulations is also budgetary?

In other words, is it envisaged that this will cut down on the cost to the Federal Government of taking care of the handicapped and disabled?

Secretary BELL. We can assure you that these regulations were not proposed because of budgetary considerations. Now, I would want to emphasize that I cannot say that we will not be before the Congress again with some more budget cuts. I am quite certain that we will be facing more of them.

Senator WEICKER. Also, those provisions that apply to the handicapped and the disabled?

Secretary BELL. I did not get your question.

Senator WEICKER. When you say that you will be before the Congress with more budget cuts, that would apply also to this category of the handicapped and the disabled?

Secretary BELL. I think it will depend on the size of the budget mark that I get from OMB as to what I will have to do with that. If it is a huge one, then——

Senator WEICKER. You see, that is the problem. In other words, it will be a dollar-and-cents determination by OMB that determines your attitude toward the handicapped and the disabled rather than the needs of the handicapped and disabled.

Secretary BELL. Mr. Chairman, after I get a budget mark which is a gross dollar amount, then I can come back to OMB with how I spread the money. And I want to assure that I have been spreading it, applying a smaller proposal for cuts to the handicapped than in other areas.

Senator WEICKER. I understand, but it seems to me that while the handicapped and disabled population is on the increase in population terms in this Nation, and while the disciplines and technology are being developed, your advocacy would be for larger amounts of money, not less, do you not think so, in your capacity as the advocate for these people in the Federal Government?

Secretary BELL. What my advocacy is, Mr. Chairman, inside of the administration when we talk about appropriations and what we get when Director Stockman and others have to face the realities of the fiscal picture are two different things.

Senator WEICKER. So, there is first an advocacy of the OMB position and then, second, an advocacy of the community itself?

Secretary BELL. Well, I do not want to separate myself from OMB and the administration. We have to come to an agreement in that regard, and in the process of coming to it I may be coming from one direction and they from another.

Senator WEICKER. Is this change, then, in regulations part of that budgetary effort?

Secretary BELL. It is not.

Senator WEICKER. It has nothing to do, in other words, with savings to the Federal Government?

Secretary BELL. It does not. In some instances, we think that our regulations will make the current money more cost effective. We think that some of our rule changes in some cases will make more time available to teachers to teach and less required to do paperwork and fill out forms that we think, respectfully, that the current regulations require that we do not think are necessary.

Senator **Weicker**. Do you envisage that this will save the States and local communities money?

Secretary **Bell**. I do not think it will save them money, but I think it will make the money that they spend more effective because teachers will be able to spend their time on teaching rather than on paperwork.

Senator **Weicker**. The last part of my question, and then I will move to Senator Hatch, is again, to use the Senator from Indiana's term, to review the bidding. I think it important to point out at this hearing—and I think you are as aware of this as anybody—that prior to the Federal role, there was an insufficient role being played at the local and State levels.

Secretary **Bell**. I agree with that, Senator.

Senator **Weicker**. I am pleased to hear that. What would give you to believe that in a short space of 5 years, a reversion to the old system of greater reliance on the State and local level is going to inure to the benefit of these disabled and retarded persons?

Secretary **Bell**. I would believe that because of the changes that have taken place in these 5 years, largely caused by this act. We now have every State with an education for the handicapped law, and back when we started it was far from that.

I know States that were excluding children from opportunities for education, but I know other States that had a great record up to that point.

Senator **Weicker**. Mr. Secretary, may I point out to you that during these economically difficult times, the States and local communities to a great extent are trying to figure out ways to dodge their obligations under Public Law 94-142. They do not have the resources to go ahead and provide for what the law demands of them, much less are they looking to take on additional burdens and duties.

That is the fact of life; that is not my opinion. I can just tell you, speaking for the State of Connecticut which is generally enlightened on the subject, that that is what is going on at the local school district level and at the State level.

Why do you think the State of Connecticut, which has been extraordinarily enlightened in past history as to its treatment of the retarded, files an amicus curiae brief with the Supreme Court of the United States stating that, in essence, the obligation of the States is only to provide minimal custodial care?

Now, do you think that that expresses the ideals of our State, or do you figure that it, in effect, is to give them security against the financial obligations that could be imposed by something more than minimal custodial care?

I have to really question the premise that anybody is prepared to take on the role that you say the Federal Government is now relinquishing.

Secretary **Bell**. Well, that premise is based on the fact that even in these troubled times, most of the States—I could not talk about Connecticut specifically—but most of the States and, Senator Hatch, our home State is among them—even in these troubled times, have been increasing without a Federal demand their commitment to education for the handicapped—their financial commitment to it—and I believe that that commitment is strong.

I believe that local and State school officials and locally elected school boards are just as committed and concerned about these children as we are.

Senator WEICKER. Senator Hatch?

Senator HATCH. Mr. Secretary, given our concern with the appropriate evaluation of handicapped children, what is the rationale for changing the requirement for multidisciplinary assessment of all children?

Secretary BELL. We believe that multidisciplinary assessment, Senator Hatch, of a child who has only a minor speech disorder, like a lisp, is an example of a heavy handed Federal regulatory requirement that is not necessary. We think there ought to be multidisciplinary evaluation for the children who need it.

I would like to ask Dr. Sontag to just discuss this if he would, because he is the real professional that knows what the problem is. There is a serious problem with the present rule that stretches out across the entire Nation that requires our revision.

Dr. SONTAG. Senator Hatch, our proposal on multidisciplinary evaluation is intended to follow the lines of best educational practice. As Secretary Bell has said, for a large number of these children, it is commonly accepted in the field of special education that they are not in need of "multidisciplinary evaluation."

The disability area that comes quickest to mind is that of speech-impaired children. The practice is that one evaluation by the speech and hearing clinician is generally perceived to be more than adequate.

So, the Federal Government through these proposed regulations is saying let us go to best educational practice. We think that over 1 million needless evaluations would be saved, and the time of professional evaluators and psychologists and other clinicians could best be spent in providing multidisciplinary evaluation for children who are more in need of it, as specified in the proposed regulations.

Senator HATCH. Will the changes in the least restrictive environment provision of the proposed regulations reverse the current trend toward including more handicapped children in regular classes?

Secretary BELL. We believe that the changes in least restrictive environment are minor, but we think they are necessary from the input that we have had. Again, I would like to ask Dr. Sontag to draw on his experience and explain what we had in mind there.

Dr. SONTAG. Senator Hatch, least restrictive environment is one of the basic ingredients of Public Law 94-142, established with the Pennsylvania Association of Retarded Citizens consent decree in 1971.

There is nothing in these proposed regulations that we think will move us away from the ultimate goal of integrating handicapped children into society. There are a couple of changes that we are proposing that have been criticized, and I might draw attention to those particular changes.

The existing regulations call for the establishment of a continuum of services, all the way from an institution for some children to the regular classes for some children, with various alternatives in between.

As a result of our monitoring visits to State education agencies and local education agencies across the country, we have uncovered that school officials have used the continuum as a vehicle to segregate children and to say, "Well, the Federal Government says an institution is all right." Senator Weicker just alluded to a major case dealing with institutionalization and deinstitutionalization.

Our position is to integrate children and not segregate them. We do not have to go too far here to a neighboring State that has in place a continuum of services. Children are labeled as level 3 or level 4 or level 5, and if a child is in a level 4 program, whatever that might be, and it is not necessary that he receives related services in that level, he has to move to another level. It puts children in blocks that we do not think treats them as individual children.

We think the basic tenet of the IEP should be the vehicle for determining the most integrated system. As Secretary Bell earlier said, this country has made significant progress in integration. Over 93 percent of all the children educated under this act are currently being educated in regular school settings.

There is a second part of our proposal that I would also like to draw your attention to, Senator, and that is the part where we are providing for the first time a vehicle for school districts to consider the potential harm to a handicapped child in proposed placement, and to consider placement proposals in the light of substantial and clearly discernible disruption of educational services provided to other children in the same class.

Our position is that this criteria has been used for years by professionals in the field to make placement decisions on children. What we are establishing is a rather rigorous standard that will only call for the removal of an incredibly small number of children whose placement in a more integrated and regular class environment would be disadvantageous to both the handicapped child and to the normal child.

It is a complex question; I could go on, but I will stop there.

Senator HATCH. Each year, the Department of Education transmits to Congress a report on the progress towards implementation of Public Law 94-142. If data requirements and documentation are eliminated from State plans, how will the Department determine the universal needs for special educators and training?

In addition, how will the Office of Special Education monitor how effectively Federal dollars are being utilized to educate our handicapped children without adequate data to determine compliance with the law?

Secretary BELL. Dr. Sontag, do you want to respond?

Dr. SONTAG. Yes, Mr. Secretary. We have a rather complex system of monitoring Public Law 94-142 today. I have before me a couple of documents which will testify to the extent of our monitoring. We prepare a complete profile—data that we have, history of complaints, OCR data, and so on—and put this into a document. Here is a State that we just recently visited—177 pages of data that is available to us.

In addition to the data that we have readily available through the forms that we collect from the States, we still will continue to examine information from State statutes, State policies and procedures, Office of Civil Rights 101 and 102 data, OCR-investigated complaints, SEP-investigated complaints, NCES data, child count data which will continue to be requested, performance and financial report data, previous State plan and approval, data supplied to us by the Office of Inspector General, and ongoing litigation in that State.

We feel that there is an incredible amount of extant information available to the Department so that we can continue to monitor the law without relying on additional data from the States and without increasing the data demands.

Senator HATCH. The proposed regulations modify current requirements to avoid duplication with the provisions included in EDGAR and GEPA. If, in the future, either the current EDGAR or GEPA were substantially revised, would we have to again review the part B regulations? Could we not avoid this inefficient use of congressional and executive branch time by just allowing duplication in the code and part B regulations?

When I talk about EDGAR, I mean the Educational Department General Administrative Regulations, and GEPA, the General Education Provisions Act.

Secretary BELL. I would like to ask Tom Anderson, our counsel, to respond to that, Senator.

Mr. ANDERSON. Senator Hatch, we have become aware of this suggestion through recent briefings with Senate staff, and we are concerned about these protections. They are crossreferenced, as you have stated, in numerous places throughout the regulations. This is one consideration that we want to take a very careful look at through this comment period.

The CHAIRMAN. OK. I have a few more questions for you. I think I will submit them in writing, and if you would respond as quickly as possible, I would appreciate it.

Secretary BELL. Thank you.

Senator HATCH. Thank you, Mr. Chairman.

Senator WEICKER. Thank you, Senator Hatch.

Senator East?

Senator EAST. Thank you, Mr. Chairman.

Mr. Secretary, just to broaden the discussion a little bit here, which I think then makes an understanding of your new regulations more understandable and perhaps in better perspective, I would just like to make an observation and get your response to it.

Again, we are all sharing this idea of the common goal of attempting to help and trying to harness all the resources we can in the country to this end, which I would submit would include private and, of course, public entities, including the Federal governmen—no question about it—in which you are involved.

It strikes me that your new proposed regulations here are simply suggesting that we have great resources and imagination at the State and local level that need to be given greater flexibility to maximize their efforts, and I presume, candidly, as you were saying, make them more cost effective, as well as helping the disabled.

In short, you had better use funds and you had better use local imagination to deal with the great diversity and infinite variety that you encounter with disability. I do not see any inconsistency there with the regulations and the goal. In fact, it could conceivably maximize the goal, is that not correct?

Secretary **Bell**. That is correct, Senator. We are trying—and I guess this is one of the big issues here—we are trying to avoid specifying quite as much detail in these regulations as we have had. Now, let me give you an example.

Rather than to set specific time lines in the regulations of so many days to get this done and so many days to get that done and doing this here out of Washington, we say in our regulations that the State education agency ought to set reasonable time limits, and then we hand that to the State to decide.

Now, there are several reasons that we do that. We need to mention more that there are State laws as well as this Federal statute, and State legislatures have enacted requirements and State departments of education have rules. This can become very complex and have more redtape and more requirements than you want.

There are some State statutes that already have time lines specified in the law. What do you do if those are different from the Federal regulatory time lines? Now, the time lines were not in the statute, but they were written into the regulations. We would like to back away from some of them—not all of them, but some of them—and ask the state education agency to set reasonable time lines.

What is reasonable? I think we would have a responsibility for monitoring that, and if some State is trampling on the rights of the handicapped by a stretching of the term "reasonable," then we ought to have a talk with them.

But we are trying in some instances here to give some responsibility to the State and local authorities. I would emphasize, Senator East, that we put up from 8 to 10 percent of the money and the State and local authorities put up from 90 to 92 percent of the money.

I am coming at this as someone who has been there and has served in that capacity, and I hope I am not overidentifying in that regard—that State and local officials ought to have some of the say, since they are putting up 90 percent of the money. So, I have not felt that we needed as much detail as we have had in the statutes.

Now, I would say as we address these regulations and we get into them, we do not have near the regulatory change that some had in mind when we started, as we studied the problems and as we looked at concerns and as we looked at a need for protections in this regard.

But I would say, yes, in response to your question. We are hoping that if the committee goes along with us and if the hearings bear out what we have in mind, we would delegate, within a framework so there is not total latitude to do what you please—within a framework, we would delegate a little more discretion to the locally elected school board, the local school superintendent, and the locally elected chief State school officer and his board, and to that State legislature that has enacted laws on the State level.

Senator **East**. Thank you. In keeping with your observation, I would like to point out just parenthetically, as a matter of interest in the record—and I think it is pertinent—that one of the great handicap accomplishments of our time, the March of Dimes, founded by Franklin D. Roosevelt, was a private sector endeavor which conquered polio as a disease, and at Warm Springs, where I have spent considerable time, established one of the most effective rehabilitation centers in the country to deal with the handicapped.

In other words, it was done, interestingly, without—and this is not to belittle—I am not attempting to do that and I do not want the record to show it. I am not belittling the important point of Federal Government activity or State and local. I am just rounding out the picture here for those who are concerned about the overall problem of dealing with the handicapped that there is a remarkable example of where a private sector endeavor conquered one of the most dread diseases of our time and established one of the most effective rehabilitation centers in the country.

Secretary **Bell**. Right.

Senator **East**. So, sometimes those of us in the Government need to beware of getting too smug, whether we are at the Federal level or the State level or local level, that we are the only ones that have the knowledge and the sensitivity, the insight and the wisdom to deal with the infinite variety of problems that we encounter in dealing with the physically disabled.

In fact, I would argue that if we go to the extreme of simply saying it is totally a Federal responsibility and will be totally federally funded, it tends to dry up the private sector from having any interest in the subject, and it tends to get State and local government to assume that they have no obligation and they have no responsibility. It gets them probably a bit insulated and on the defensive. They see no obligation.

So, ironically, in the name of expanding horizons and opportunity for helping the handicapped, you restrict and narrow them. I am simply suggesting, as I see it—please correct me if I am wrong—that your new guidelines are designed to inject greater flexibility into State and local handling of the problems of the handicapped, but in no way, shape or form are designed, nor do you think they will, diminish the commitment in our case here of the Federal Government to maximize all resources in this country to aiding and abetting and furthering and continuing progress, as the chairman has rightly pointed out, of the handicapped in this country.

Secretary **Bell**. That is really where I have been coming from, Senator East. I would emphasize that we want to do that within a carefully crafted Federal framework so we do not give up on the rights of these students. And the question comes up, how much trust and faith do you have in local and state officials?

I realize that the record back before this act was passed was the very reason that the act was passed. I feel that we are now to a point, with the State statutes on the book, that we can relax a bit, and I would emphasize "a bit," because these rules still leave a considerable number of requirements and protections.

Senator **East**. Thank you, Mr. Secretary. Perhaps I will get back to you, Mr. Chairman. I do not want to monopolize the time here.

Senator **Weicker**. Thank you very much, Senator.

Is this a part of what is known as the New Federalism? Would that be a fair statement?

Secretary **Bell**. No, Senator Weicker. The New Federalism is a delegation of revenue resources and total authority out to the States with no Federal statute in place at all, and this is absolutely not part of the New Federalism.

Senator **Weicker**. Have you received assurances that the State and local governments and the private sector volunteers are prepared to take up the slack here that is left by the Federal Government and go along with the changes as you have proposed them?

Secretary **Bell**. We do not believe that much slack is going to be left. Rather, we think that there is some discretionary authority, very limited and carefully circumscribed, to let State and local officials decide things like time lines.

But as far as protecting the rights of the children, the rights to hearings, the rights to due process, and a demand that they have a free and appropriate education—all of that will still be in place.

Senator **Weicker**. You mentioned rights, and I realize it is ancillary to these hearings. Is there a review at the present time in your agency of section 504?

Secretary **Bell**. We are currently looking at section 504 regulations. We see them as closely related to these. There may not be as much necessity to amend 504 as we have felt there is for these rules.

Senator **Weicker**. Of course, that again gives us a little pause here. We are now talking about the two cornerstone pieces of legislation as to the rights of the handicapped and disabled in this country. Now, we have it out on the table that section 504 is also undergoing that kind of review.

Of course, my question to you has to be what precipitated this whole process? I think our committee as much as your agency is a clearinghouse for public opinion throughout the country. I will be glad to check with staff, but I do not recall that we gave gotten any flood of mail asking for review of Public Law 94-142 or section 504. I was wondering whether maybe it had all been directed to your agency.

In other words, did it come from the public, or was it by direction of the administration that Public Law 94-142 and section 504 be reviewed?

Secretary **Bell**. We have had numerous requests for review of Public Law 94-142. Not only have we had them, but as I said in my testimony, so did our predecessors, and they had a review underway when we came.

Senator **Weicker**. Was this part, in other words, of the deregulation process and the reviews of the group headed up by the Vice President?

Secretary **Bell**. It is part of that process, but it was started by our predecessors and it has been caused by input that we have received from the field.

Senator **Weicker**. Well, why was it when I asked questions of representatives of your agency as to whether this review was going on I received a negative response? Then, admittedly, subsequent to that time and once the review was underway, it was rather foggy as to what you fellows were doing.

Secretary **Bell**. I do not know who responded to you in the negative, but we have been looking at these regulations, and our predecessors have.

Senator **Weicker**. What worries me—and I get back to the funding question—is that one of my other capacities is to chair the Appropriations Subcommittee on State, Justice and Commerce, which has under it legal services.

Now, the tactic—and it is being repeated time and again, and I will give you another instance of it. In legal services, the administration says that they are for legal services, but they want zero funding.

You say you are for the handicapped and disabled and for advancing their quality of life. On the other hand, the funding is being cut drastically and the Federal obligation is being cut somewhat by what you are proposing.

It seems to me we have rather a contradiction going on here by your statement of intent and your request for funding, and I am trying to get that straightened out. Maybe you can use this opportunity to do just that.

Secretary **Bell**. Well, our intent is part of a total review of all of the regulations in the Department that has been underway for some time, and is in response, as I indicated in my testimony, to the President's Executive order.

Senator **Weicker**. So, in other words, the theory is that you can do more with less? You can do more for the handicapped and disabled with less money, and you can do more for the handicapped and disabled with less obligation placed on the Government?

Secretary **Bell**. No, Mr. Chairman, I would not take that leap from what I said, that I am alleging that we can do more with less.

Senator **Weicker**. Well, there is lesser funding and there is lesser in terms of the law being requested. That is the truth, is it not?

Secretary **Bell**. But I am not alleging that we can do more with less, notwithstanding the fact that we are facing some horrendous fiscal problems and we are cutting back on funding in many areas. But I do not want to move from that position to where I am absurdly saying that we can do more with less.

I think what we can do, Mr. Chairman, is to be more efficient with what we have.

Senator **Weicker**. I appreciate the candor of your response. But, in effect, what that boils down to is that we will do less with less.

Secretary **Bell**. Well, actually, we are not because our 1982 appropriation is higher than 1981. I acknowledge what we propose and what Congress decided to do, but the situation that we are actually in here is you now have more Federal money than you had in 1981 in that regard.

Senator **Weicker**. Would it be fair to say that that was due to the efforts of the Congress and not the administration? [Laughter.]

Secretary **Bell**. I said that, Mr. Chairman; I acknowledged that. I would also indicate that there have been some other benefits. If you apply a pencil to this, it is quite impressive.

I would like to make this point if I may. The inflation rate is down dramatically from where it was. During the time that I served in Utah as an education official, for 3 consecutive years under a Democratic Governor we received Executive orders cutting our budgets because the constitution requires a balanced budget.

Why were we getting these budget cuts? Because sales taxes were off, because big-ticket items on automobiles and homes, and so on, were not coming in. Out of all of this economic difficulty that we have had, education budgets get cut dramatically, as I illustrated in the experience in my own State.

So, when we can strengthen the local tax base and improve that situation, there is a dramatic improvement that can come from that, because as I pointed out, that is where 90 percent of the money comes from in the first place. It is State and local taxation that is really financing these children and other children.

In addition to that, Mr. Chairman, without the benefits of the reduction in the inflation rate from what it would have been had we not cut the budget would be still eroding the purchasing power of those dollars. In some ways, that is more beneficial than the 8 or 10 percent fiscal contribution that we have been providing.

Senator **Weicker**. Well, now, Mr. Secretary, this is not the Joint Economic Committee. This is the Subcommittee on the Handicapped, and all I can do is try to conduct these hearings within the purview of the responsibility of this committee. This committee is here to go ahead and articulate the problems, the opportunities, and the solutions of the handicapped and disabled.

Secretary **Bell**. I am aware of that, Mr. Chairman.

Senator **Weicker**. Otherwise, we get into the argument of, do you not feel that the money should be going, for example, to these members of our society rather than to huge increases in defense? I mean, you know, it is all Government spending and it is all priority.

Apparently, you seem to accept what needs to go to the Defense Department, but take that rather passively in terms of how it affects this other category.

Secretary **Bell**. The reason I got into the economic factors is because of the comment that was made by the chairman on the budget. I was trying to defend this administration's position on the budget and point out the impact on local school budgets.

Senator **Weicker**. All right. Then is it fair for me again—and I reiterate the question—to say that there are budgetary considerations that are responsible both for the funding levels requested and for the regulatory changes requested? There are budgetary considerations behind them?

Secretary **Bell**. Not for these regulatory changes. These regulatory changes are not driven by budget considerations.

Senator **Weicker**. In no ways, in other words, is it an attempt by the Federal Government to immunize itself to some degree of the obligations it now has under Public Law 94-142?

Secretary **Bell**. It certainly is not.

Senator **Weicker**. And you feel greater numbers will be served under the regulations as you espouse them; is that correct? Will greater numbers be served by virtue of the regulations that you have put forward?

Secretary **Bell**. I will ask Dr. Sontag to respond.

Dr. **Sontag**. Senator Weicker, when Congress passed this legislation, the executive branch of Government estimated that the true incidence of handicapped children was approximately 12 percent. In the past 3 or 4 years, with the major exception of the field of specific learning disabilities, we have begun to see a leveling off of the rate of growth of children enrolled in these programs.

It is our feeling that we are approaching a point where only small numbers of children will be added, in spite of a tremendous decline in public school enrollment each year. But the growth rate will probably begin to level off to some extent, but overall it will be a percentage increase given the dramatic decline in public school enrollment.

Senator WEICKER. Senator East?

Senator EAST. Thank you, Mr. Chairman.

Mr. Secretary, in the brief few minutes that I have in this questioning process, I would like to focus a bit on what sort of concerns are being expressed by local personnel and State personnel in carrying out programs for the handicapped.

Are they concerned about the present guidelines; that is, are they contending, for example, that they are too inflexible and they impose inordinate costs upon them because of certain ways they must deal with things?

Can we generalize about the contribution or, to use that phrase, feedback from local officials? What are they saying?

Secretary BELL. Yes. They feel that there are some aspects of the rules where some carefully crafted changes would be helpful to them. I might ask Dr. Sontag to give you a little more specifics about that, as he has administered this and worked with the State directors for education of the handicapped.

Dr. SONTAG. Senator East, I think it is probably important to emphasize again the significant number of children. Four million children are served in this program today—an increase of approximately 100,000 children in the December 1981 child count over the previous year in terms, again, of a dramatic decline in school enrollment.

While I do not want to belabor the increased child count, I think an increase there indicates that State and local officials in no way are backing away from this law with the dramatic fiscal constraints that they are operating under. But they have provided us through the years with a series of comments on the law. We have taken many of those into consideration as we have drafted these proposed regulations.

I think one example that the States have talked to us about over the last couple of years has been the very tight timeframes that they have had to operate under for due-process hearings. We have established in the original regulations a 45-day timeframe for due process hearings, and it has just not worked. States and local education agencies trying to make a good-faith effort to provide procedural safeguards for handicapped children have not had enough time.

In addition, we feel that the very short timeframe has moved handicapped children, parents, and school officials into adversarial relationships when it is not needed. Several States have proposed to us to try to develop some kind of conciliation/mediation process.

Because of our regulations of 45 days, it has been very difficult for us to approve those kinds of things. We have data which indicates that where school officials and parents come together in mediation and conciliation, they are able to resolve problems, and usually the school officials wind up siding with the parents in mediation.

So, we think that by expanding the timeframe for due process, we will be able to have less of an adversarial relationship between the school officials and parents in trying to work out what is in the best interest of the handicapped child, and at the same time providing procedural safeguards. This has, I think, been one of the major points that we have heard from State and local officials.

Secretary **Bell.** Another place, Senator East, where they would like some regulatory relief is the requirement we now have that each and every one of those 4 million children receives a very comprehensive multidisciplinary evaluation when we know that 1,100,000 of them are youngsters in speech and hearing type therapy programs, and that multidisciplinary might not be necessary for all of them.

So, it is in areas like that where we want to relax Federal prescription a bit. Now, we realize that there are some who say that when we propose those changes, we are letting down all the safeguards and that we are going to gut the whole regulatory procedure. We argue that that is not so. We argue that you have to be careful.

When you set a rule in Washington that extends across the Nation to 16,000 school districts and 4 million children, you need to be a bit humble about what that rule demands. We are trying to be responsive, and we are trying to do it in a careful way so that we are also looking out for the rights of these children.

We think that our changes are reasonable and responsible and sensible, and that they will be beneficial in the long haul. And we believe that some changes—not massive changes, but some changes, such as the ones that we have proposed, are necessary and desirable after 5 years' experience with this program.

Senator **East.** Do you sense that these complaints that you are getting are not simply from perhaps certain local and State officials who are really looking for a way to get out from underneath the obligation here under Federal law?

I gather you are saying that you feel that in many, many cases these are legitimate complaints and they are sufficiently broad based and extensive that they raise a serious and substantive problem with implementing the Federal law where there is such strong State and local resistance to it, and the resistance or unhappiness or restlessness with it is, to some extent, justified?

Secretary **Bell.** Yes, we would agree with that. We think that the regulations in a number of instances have gone beyond the requirements of the law. Some of that has been necessary. I would just emphasize that we have had extensive litigation on this program.

There has been a case in Pennsylvania that is now, or we think will soon be before the U.S. Supreme Court; and another one in Georgia, where lower courts have ruled that handicapped children are entitled to more than a 9-month school year, extending over into summer school.

There has been a lot of litigation like this challenging the 180-day school year. The circuit court in Pennsylvania is now under a court order that intervenes into the length of the school year. There is the U.S. Supreme Court *Riley* case which has to do with the extent of related services

There is litigation in Mississippi and Georgia over whether or not we are going to require possibly summer school as well as 9 months of school.

Senator **Weicker**. Would the Senator yield?

Senator **East**. Certainly.

Senator **Weicker**. Just on that point, you are just now on, if you will, probably nearing the end of the litigation precipitated by the initial passage of Public Law 94-142, as it is now being at least clarified in legal terms.

Is it the opinion of your Department that these changes which you are proposing will also now result in a new round of litigation in order to define the meaning of Public Law 94-142?

Secretary **Bell**. On the contrary, we think that it will avoid future litigation. We think there are some ambiguities in the law, but by regulationwriting and changing, we can avoid that. We do not want to set ourselves up as having superior wisdom in that regard. We suspect that had we been here drafting those regulations, there still would have been a need for changes.

So, I would not criticize our predecessors; we think they did a good job at the time. It is just that with experience, we think it is time for some change.

Senator **Weicker**. Senator East?

Senator **East**. Just one final question, Mr. Chairman.

On the basis, then, of this line of questioning I have had with you, appreciating that there would be fairminded people who would think otherwise, but at least so that I fully understand what you and the Department are saying, as you see these proposed revisions here, they would really accomplish two ends.

One, it would make for a more positive attitude as far as the parents of these children to work with the local officials; it would make it less adversarial, as you put it. And you think the positive, constructive side of it is it would make for greater opportunity of a cooperative spirit to work out and to resolve problems, depending upon the individual case of the disabled child. That is one thing you would accomplish.

Secretary **Bell**. Yes.

Senator **East**. And second, as you see it, there has arisen in recent years because of the current regulations a certain amount of unhealthy antagonism between State officials, local officials and your Department.

Secretary **Bell**. Right

Senator **East**. And you feel that their concerns, to some extent—not in every case, but to some extent—are legitimate and understandable, and that these revisions would help relieve that tension and make for a more cooperative and positive spirit of cooperation between local and State officials and the Department of Education.

In sum, you are again back to what I assume is the underlying philosophy, and not that I doubted it, but I just wanted to underscore it and put it on the record. None of this is designed, certainly, as a motivation—granted, critics may say, well, practically, it will do so—none of this is designed to show a lessening of the commitment by the Federal Government to the ultimate goal that we have all agreed upon at the outset, but simply is an adjustment along the way. I gather what you are saying is it will make for a more cooperative, constructive, positive atmosphere for accomplishing the goal, and these proposed changes are reasonably developed and tailored to that end. Is that what we are saying?

Secretary **Bell**. Senator, we believe that they are, and I think after we have had opportunities in our hearings, nationwide, for comment and reaction, we will even feel more confident about that. Where we are not, we can make some changes.

But we really do feel, as you just indicated, that our changes are reasonable and necessary. We do not think that they are going to dramatically change the commitment that we have to handicapped children.

Senator **East**. One final question, Mr. Chairman, and I will cease and desist.

Assuming they go into effect, would you have an effective way of monitoring them to make sure that the changes are not being used as a facade behind which simply to diminish commitment and interest; in short, a followup to make sure that what you understood it to be is what, in fact, is going on?

Secretary **Bell**. Yes, sir. They will have to file their state plans with us, and we can look at them and monitor them. Dr. Sontag's staff will be in touch; he meets with the State special education directors. So, we will have ample opportunity for that monitoring to take place.

Senator **East**. Thank you, Mr. Chairman.

Senator **Weicker**. Thank you, Senator East.

Some final questions to you, Mr. Secretary, and then we will get on to the panel that has been kind enough to agree to be here. I have the impact statement of the Department of Education, dated August 1982. Let me just read to you two sections that seem to contradict testimony that you have given to us here today.

First of all, as to the goals of the proposed regulations, and I am reading verbatim from the impact statement: "In general, the proposed regulatory changes are aimed at"—and now I am reading the second line—"reducing fiscal, administrative, and paperwork burdens on public agencies."

I asked you as to whether or not a purpose of this legislation was to reduce the fiscal burden and you said it was not, but your impact statement says that it is.

Secretary **Bell**. The fiscal burden and the regulatory burden are both listed in that sentence. We have emphasized throughout our testimony the fact that we think that we can conduct these evaluations at less cost; that we can cut back on the recordkeeping. By doing that, we will free personnel to be more effective, and therefore most cost effective in meeting the needs of these students.

I should also emphasize, Chairman Weicker, that that is our draft document of our regulatory impact statement, not that I am disavowing it at all.

Senator **Weicker**. Then, on page 8—I asked you whether or not these new regulations might result in increased litigation, and on page 8—and I now read from the impact statement:

> The proposed regulations also permit SEAs and LEAs to establish reasonable limitations on the provision of related services during the IEP process. This change may result in increased due process hearings and litigation due to disagreements between parents and the school regarding the establishment of these limitations."

Secretary **Bell**. Could you respond, Mr. Anderson?

Mr. **Anderson**. Yes. Mr. Chairman, I was not directly involved, but my understanding about the preparation of this impact statement is that it predated the recent *Riley* decision from the U.S. Supreme Court. In our view, the *Riley* decision reinforces the use of processes, and we think that our regulations also reinforce the processes established by statute that will provide for complaint resolution.

The Supreme Court has set some limits on the extent to which the courts ought to or will get involved in reviewing administrative decisions which have been arrived at following statutory procedures, and designed to provide educational benefits to the children.

Senator **Weicker**. Well, I would only say this, Mr. Secretary, in conclusion. What with the funding cuts—and that is indisputable—certainly, there is a great number of us—not all; there is fair disagreement here—that feel that these proposed changes in the regulations are a step backward.

Two statements were made here at the hearing which are contradictory to those contained in your own impact statement, and the whole record is not one that engenders trust into what it is that you are about, or the Department is about or the administration is about, when it comes to supporting the interests of the retarded and disabled of this country.

You know, I can assure you not from my vantage point, because I have got to carry the ball here in Washington, but certainly I can assure you from a family standpoint—I suppose from my wife's standpoint with our young son, and speaking through her, in other words, for the millions of parents in this country—they have got all they can handle right now without keeping their eye on you and the Department of Education.

Secretary **Bell**. Senator, they do not need to keep their eye on me.

Senator **Weicker**. Well, they need to keep their eye on this kind of hanky-panky that is going on with less funding; cutting back, in other words, on the Federal role, and the types of statements which contradict previous statements made by the Department—the ones made before me in committee hearings as to what the Department of Education was all about.

Now, all I am saying to you is that there is a process here and we are going through it, and you have your hearing schedule. But I think I am a little bit nervous when I see a Congress just about ready to go out both on recess, and then probably come back just for a few weeks and go out, at which time the limitation expires as to comment. And I figure all this is going to happen when nobody is around to say no, and I will tell you, Mr. Secretary, I am going to say no. And I say it by virtue of whatever influence I can bring to bear within this Committee, but more particularly on the floor of the U.S. Senate.

I think that, clearly, a substantive change is being made here, and it is something that we want to go very slowly into with a full recognition of what is involved by each Congressman and Senator, and indeed the whole community that is this Nation.

I think the country will accept a great deal in the way of financial sacrifice. I do not think they expect to see that achieved at the expense of the retarded and the disabled.

Secretary **Bell**. Senator, no one is up to any hanky-panky with these regulations. We want to be forthright about them. We do not want to pull any fast one about when Congress is out when this comment period is ended. I have authority to extend that period. I would be happy to talk to you further about that.

We are not about to pull any hanky-panky, Mr. Chairman, on these regulations. We may have a disagreement about them. I want to be forthright about that, but we are not up to any skulduggery as it relates to these regulations.

Senator **Weicker**. Thank you very much.

The last witnesses will be a panel consisting of Mr. Paul Marchand, panel chairman, Consortium Concerned with the Developmentally Disabled; Georgia Gibson of the National Education Association; Justine Maloney, Association for Children With Learning Disabilities; Bette Hamilton of the Children's Defense Fund; and H. Rutherford Turnbull III, Association for Retarded Citizens.

I would appreciate it if you would all come forward. We are exceptionally privileged to have such a distinguished group before us. I apologize for the time that was taken on the previous matter, but I think it clearly was necessary for the committee and the Senate as a whole.

We would appreciate it if you would keep your opening statements to 5 minutes so that there might be, again, a chance for a dialog between us as to the problems and the issues that you raise.

So, please proceed in any way that you deem fit. It is just a great honor to have you all here, and I thank you for giving of your time.

## STATEMENT OF PAUL MARCHAND, CHAIRMAN, CONSORTIUM CONCERNED WITH THE DEVELOPMENTALLY DISABLED; GEORGIA L. GIBSON, MEMBER, BOARD OF DIRECTORS, NATIONAL EDUCATION ASSOCIATION; JUSTINE MALONEY, MEMBER, GOVERNMENT AFFAIRS COMMITTEE, ASSOCIATION FOR CHILDREN AND ADULTS WITH LEARNING DISABILITIES; BETTE EVERETT HAMILTON, EDUCATION DIRECTOR, CHILDREN'S DEFENSE FUND; AND H. RUTHERFORD TURNBULL III, SECRETARY, ASSOCIATION FOR RETARDED CITIZENS

Mr. **Marchand**. Thank you, Mr. Chairman. It is a pleasure and honor to appear before you today to present our views on what is likely the most pressing concern facing handicapped children, their families and advocates; that is, the administration's deregulation of Public Law 94-142, the Education for All Handicapped Children Act.

I am Paul Marchand. Since the early 1970's, I have served as chairman of the Consortium Concerned with the Developmentally

Disabled, commonly known as CCDD. The full consortium is comprised of approximately 20 national organizations representing handicapped persons and public and private agencies which serve them.

We are involved in nearly all Federal policy affecting disabled people, ranging from long-term care, rehabilitation, health, social security, and education. Most, if not all, of the members of the consortium were around in the early 1970's and took part in the development of Public Law 94-142. We will always be indebted to you Members of Congress, and particularly you and other members on this committee, Mr. Chairman, who had the vision and fortitude to enact that law.

Each of my fellow panelists will provide a brief review of selected components of the proposed regulations to expose from our perspective as advocates for handicapped children the harmful effects these proposed rules will have on children, and quite likely on school systems.

Before this begins, I would like to take this opportunity to read to you a statement developed by the consortium last week shortly after the proposed rules were published.

The education task force of the consortium met on August 5. Several organizations not affiliated with the consortium also participated in this meeting. After a careful review of the proposed rules, it was the sense of the group assembled that, No. 1, these proposed regulations incorporate as a major feature a fundamental erosion of the rights and protections of handicapped children and their parents.

Two, these unacceptable aspects of the proposed rules so far exceed the potentially positive aspects that the group found it impossible to discuss ways to amend the proposed regulations so as to make them acceptable.

Three, the groups observed that in 1979-1980, the Congress engaged in extensive oversight hearings respecting all aspects of this law. It was the sense of the groups that these proposed regulations do not reflect positive, substantive regulatory action based upon issues raised in those oversight hearings.

Four, therefore, because of all of the preceding, it was the sense of the organizations assembled that they could only recommend that these proposed rules be withdrawn and that new proposed rules be considered that will further safeguard the rights of children and their parents, as well as further facilitate the vital role of State and local school systems in fulfilling the mission of this law.

On the back of our statement, we have a list of the 14 national organizations of the consortium and 6 nonconsortium members who participated in that meeting and did, in fact, espouse the sense of that group.

[The prepared statement of Mr. Marchand follows.]

Consortium
Concerned with the
Developmentally
Disabled

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STATEMENT

on

PROPOSED REGULATIONS

for

P.L. 94-142

THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

Presented By:

THE CONSORTIUM CONCERNED WITH THE DEVELOPMENTALLY DISABLED

August 10, 1982

Mr. Chairman and other respected members of the Committee, it is a pleasure and an honor to appear before you today to present our views on what is likely the most pressing concern facing handicapped children, their families and advocates. That is the Administration's deregulation of P.L. 94-142, the Education for All Handicapped Children Act.

I am Paul Marchand. Since the early 1970's, I have served as Chairman of the Consortium Concerned with the Developmentally Disabled, commonly known as CCDD. The full Consortium is comprised of approximately 20 national organizations representing handicapped persons, and public and private agencies which serve them. We are involved in nearly all federal policy affecting disabled people, ranging from long term care, rehabilitation, health, social security and education. Most, if not all, of the Consortium member organizations were involved in the enactment of P.L. 94-142, a vital law for which we will always be indebted to you members of Congress who had the vision and fortitude to enact it in 1975.

Each of my fellow panelists will provide a brief review of selected components of the proposed regulations to expose, from our perspective as advocates for handicapped children, the harmful effects these proposed rules will have on the children and quite likely, on school systems. Before this begins, I would like to take this opportunity to read to you a statement developed by the Consortium last week, one day after the proposed regulations were published.

## CCDD STATEMENT

On August 5, 1982, the Education Task Force of the Consortium Concerned with the Developmentally Disabled (CCDD) met. Several organizations not affiliated with the Consortium also participated in the meeting. After a careful review of the proposed regulations, it was the sense of the groups assembled that:

1) These proposed regulations incorporate as a major feature a fundamental erosion of the rights and protections for handicapped children and their parents.

2) These unacceptable aspects of the proposed regulations so far exceed the potentially positive aspects that the group found it impossible to discuss ways to amend the proposed regulations so as to make them acceptable.

3) The groups observed that in 1979-80 the Congress engaged in extensive oversight hearings respecting all aspects of implementation of P.L. 94-142. It was the sense of the groups that these proposed regulations do not reflect positive substantive regulatory action based upon issues raised in those oversight hearings.

4) Therefore, because of all of the preceding it was the sense of the organizations assembled that they could only recommend that these proposed regulations be withdrawn and that new proposed regulations be considered that will further safeguard the rights of children and their parents as well as further facilitate the vital role of state and local education agencies in fulfilling the mission of P. L. 94-142.

A list of the Consortium members and other organizations which participated in the August 5 meeting is located on the reverse side of this page.

CCDD Members

- American Association on Mental Deficiency
- American Coalition of Citizens with Disabilities
- American Occupational Therapy Association
- American Speech, Language and Hearing Association
- Association for Children with Learning Disabilities
- Association for Retarded Citizens
- Council for Exceptional Children
- Epilepsy Foundation of America
- National Association of Private Residential Facilities for the Mentally Retarded
- National Easter Seal Society
- National Mental Health Association
- National Rehabilitation Association
- National Society for Autistic Children and Adults
- United Cerebral Palsy Associations, Inc.

Non-CCDD Members

- Children's Defense Fund
- Disability Rights and Education Defense Fund
- National Education Association
- National Parents and Teachers Association
- Parents Campaign for Handicapped Children and Youth

Mr. **Marchand**. I would now like to turn to our panel. Our first panelist, representing the National Education Association, which was one of our nonconsortium groups testifying today, is Georgia Gibson. Georgia has been a special ed teacher in New Jersey for 18 years. Prior to that, she was a teacher in your State of Connecticut for 5 years, and prior to that 3 years in Mississippi.

She is a member of the NEA Board of Directors. She is a member of the New Jersey State Advisory Council on Public Law 94-142. She is a member of the New Jersey special study committee on special ed, and she chairs the Ad Hoc Committee on special ed of NEA.

Georgia?

Ms. **Gibson**. Thank you. Thank you, Senator Weicker, for allowing us to come before you today. I, myself, am particularly pleased because it is not very often that the word of the classroom teacher is listened to.

It stands to reason that the Nation's classroom teachers and education employees have had extensive firsthand experience with the impact of Public Law 94-142 both on the general classroom and also on the special ed classroom teacher. As an NEA board member, I have had the opportunity to talk with members all over the country, and actually have conducted hearings myself as far as Public Law 94-142 is concerned, so that I feel I can speak for the teachers of the National Education Association.

Now, we request the subcommittee's permission to provide for the record such supplemental information and/or materials as may be appropriate in the course of this hearing.

It seems clear to us that the Reagan administration has a deep ideological commitment to removing the Federal Government from any role in the education of our citizens. Abandonment of a Federal role is, at best, pennywise and pound foolish. An educated citizen is more fully employed, and that productive employment results in the generation of increased tax revenues.

I am a high school teacher; I have youngsters who have graduated from my class who now make more money than I do. My speciality is in the educationally mentally retarded. They are in the business of aluminum siding and plumbing and in mechanics, and they are marvelous, marvelous workers.

But under the guise of lessening, if not eliminating Federal intervention, intrusion or interference in State and local government activities and reducing administrative costs to the Federal Government, the administration has embarked on an ambitious course to deregulate virtually all Federal education programs as well as many other important domestic activities. Recent sad experience demonstrates that deregulation is a code word for concomitant reduction of funding.

Public Law 94-142 is actually the latest to bear the brunt of this carefully orchestrated deregulation campaign. By proposing the changes in regulations governing Public Law 94-142, the administration is actually abandoning the responsibility to the 10-million handicapped children and 30 million handicapped adults in this Nation.

I have those figures, which are quite different from what we normally hear as 4 million children in school, which come from the

Carnegie Institute that was instituted a few years back. Their final report was made in 1980, and at that time they discovered that there were actually 10 million handicapped children in this country. And with 30 million adults, that is a sizable amount of our population.

We believe that, actually, the Government this time is demonstrating its willingness to return to what I call an asylum attitude by giving the States carte blanche to return these 10 million children to the closets from which society has been trying to liberate them for 100 years.

It took the Congress, finally, to get the States and locals to work to get these kids the education they deserve. A case in point, if you will: A young man across the street from me has cerebral palsy from the waist down. He was not allowed to go to school in my own town where I live. I went across the street to the parents upon hearing of it. I gave them a copy of the law, underlined it, and sent them to school. Two weeks later, the kid was in school. Believe me, this law works.

The President is fond of suggesting, actually, that people, at least those 18 years or older, vote with their feet. It is likely, given a real retrenchment in the Federal Government's commitment to the education of the handicapped, that many of the parents of those children will actually choose precisely to do that.

The chairman's home State of Connecticut has in place an excellent program for providing educational programs for the handicapped, as have New Jersey, Minnesota and a few other States. So, are we to be deluged with handicapped students from Alabama, Texas, New Mexico and other States, and forced to bear the costs which should be assumed by the Federal Government? This is the broken record of unfairness spinning once again.

NEA has a number of problems with the proposed regulations, only a few of which I have time to discuss today in this hearing. Lack of specific mention should not, however, be construed as to imply approval of the other elements of the package.

The total package of proposed changes is actually incompatible with NEA's policy and with the needs of handicapped children, their parents and their teachers, and thus this package is wholly unacceptable to us.

At this time I would like to discuss only four areas illustrative of the harmful, detrimental effects these regulations would generate if implemented as proposed.

The effective and equitable development and implementation of the individual education program—the IEP, as it is usually called—is extremely important and necessary to insure a free, appropriate public education for handicapped children. I wish people would stop dropping the word appropriate whenever they say, you know, "free public education." That appropriate is very important.

Although NEA acknowledges that IEP's in some cases have placed considerable time and paperwork requirements on teachers—and this is not because of the Federal regulations, Senator; it is because States and locals have given additional requirements. In my own State of New Jersey, we go from IEP's which are 2 pages long to some locals which are requiring IEP's of 24 pages. That is not part of the Federal regulation; that is a State or a local responsibility.

Now, the NEA believes that the benefits of the IEP far outweigh the inconvenience created. The IEP is one of the most important provisions of the law in that it specifies what is the appropriate education for a particular handicapped child. Therefore, NEA recommends that current regulations regarding the IEP's be retained.

Cutting the parental input on the IEP, I think, is one of the most horrendous things I have ever heard. It is one of the very few times that parents and teachers actually have a chance to get together and discuss calmly and rationally, where both can help the youngsters, thereby establishing not only help from the home but also from the school in a very equitable way.

The training that is required in writing an IEP and for support personnel that you hear of—I guess they call it the multidisciplinary team—with the multidisciplinary team, if a youngster has a problem, he is protected from being classified wrongly by the fact that you do have a multidisciplinary team.

If the problem seems to be with the speech, well, then let us write into the law something pertaining to the speech. But let us not lose the protection that the multidisciplinary team does give to the other youngsters.

Another point that I would like to make which has not been brought up is the regulation on the State advisory panels. The State advisory panel plays a very important part in many of our States, and it is one area where the public can have input because the State advisory panels are open. I know that in New Jersey, we receive public input almost every month when the State advisory panel meets.

We go over the regulations not only of Public Law 94-142, but the compatability of our State regulations with Public Law 94-142. A great deal is done through these panels, and I would like to see that they are kept the same.

Now, NEA and I are willing to respond to any questions the Subcommittee may have, and we stand ready to do all in our power to prevent the adoption of the proposed regulations. Once again, we commend the chairman for his expeditious convening of these hearings, which provide an excellent forum for a concerned teacher like myself to share with you my ideas. I thank you very sincerely.

[The prepared statement of Ms. Gibson follows:]

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TERRY HERNDON, Executive Director

STATEMENT

OF THE

NATIONAL EDUCATION ASSOCIATION

ON

PROPOSED CHANGES IN REGULATIONS GOVERNING P.L. 94-142

BEFORE THE

SUBCOMMITTEE ON HANDICAPPED

OF THE

SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

PRESENTED BY

GEORGIA L. GIBSON

MEMBER, NEA BOARD OF DIRECTORS

AUGUST 10, 1982

Mr. Chairman and Members of the Subcommittee, I am Georgia Gibson, a member of the NEA Board of Directors representing New Jersey. As you know, NEA is a private membership organization of some 1.7 million teachers and other education employees nationwide as well as in U.S. trust territories and the overseas dependents schools currently operated by the Department of Defense. I am also a fulltime teacher in the special education program at Edgewood Regional Senior High School in Atco, New Jersey, and, the Subcommittee might be interested to know, I chaired a Special Committee on P.L. 94-142 which NEA established several years ago. A sheet further highlighting my longtime involvement in special education is appended to this statement.

Attached for your information is a copy of NEA's Resolution on Education for All Handicapped Children. This Resolution is the organization's preeminent policy on education of the handicapped and is the basis on which my remarks today are founded.

It stands to reason that the nation's classroom teachers and other education employees have had extensive firsthand experience with the impact of P.L. 94-142 as it is implemented in the public schools. This is true both of the "regular" education personnel and those of us who are, like myself, trained in "special" education. As an NEA Board member who has conferred with many NEA members nationwide, I am confident that the views I am expressing today are an accurate reflection of the opinions and concerns of all of us who are directly involved in the delivery of educational services to handicapped students through the public education system.

We request the Subcommittee's permission to provide for the record such supplemental information and/or materials as may be appropriate from the course of this hearing.

It seems clear to us that the Reagan Administration has a deep ideological commitment to removing the federal government from any role in the education of our citizens. Abandonment of a federal role is at best penny-wise and pound-foolish: an educated citizen is more fully employable and likely more fully employed, and that productive employment results in the generation of increased tax revenues. Thus it is to the long-term benefit of the nation as a whole to invest in education.

But under the guise of lessening, if not eliminating, federal "intervention," "intrusion," or "interference" in state and local governmental activities and reducing administrative costs to the federal government, the Administration has embarked on an ambitious course to "deregulate" virtually all federal education programs as well as many other important domestic activities. Recent sad experience demonstrates that "deregulation" is a code word for concommitant reduction of funding.

P.L. 94-142 is but the latest to bear the brunt of this carefully orchestrated deregulation campaign. By proposing the changes in regulations governing P.L. 94-142, the Administration is abandoning its responsibility to the 10 million handicapped children and 30 million handicapped adults in this nation. It thus is demonstrating its willingness to return to the "asylum attitude" by giving to the states carte blanche to return these 10 million children to the closet from which society has been trying to liberate them for the past 100 years. The costs of doing so--not only in human tragedy but in terms of potential productivity of these individuals and the resultant potentially decreased revenues--are staggering.

P.L. 94-142, as well as many other important federal education laws, was enacted in part as a response to states' inability or unwillingness to deal realistically with the problem of the education of handicapped students. If the proposed changes in regulations become final, much of the responsibility for educating--and funding programs that do so--for the handicapped will be returned to the states, most of which were unable or unwilling to take constructive action in the first place.

The President is fond of suggesting that people--at least those 18 or older--"vote with their feet." It is likely, given a real retrenchment in the federal government's commitment to the education of handicapped children, that many of the parents of those children will choose to do precisely that. The Chairman's home state of Connecticut has in place an excellent program of providing educational programs for handicapped children, as have New Jersey and Minnesota and a few other states. So are we to be deluged with handicapped students from Alabama, Texas, New Mexico, other states and forced to bear the costs which should be assumed by the federal government? This is the broken record of "unfairness" spinning once again.

NEA has a number of problems with the proposed regulations, only a few of which I have time to discuss today in this hearing. Lack of specific mention should not, however, be construed to imply approval of other elements of the proposal. The total package of proposed changes is incompatible with NEA policy and with the needs of handicapped children, their parents, and their teachers, and thus that package is wholly unacceptable to NEA.

At this time I would like to discuss four areas illustrative of the harmful, detrimental effects these regulations would generate if implemented as proposed.

- The effective and equitable development and implementation of Individual Education Programs (IEPs) is extremely important and necessary to insure a free and appropriate public education for handicapped children. Although NEA acknowledges that IEPs in some cases have placed considerable time and paperwork requirements on teachers--often because of additional state or local requirements--the NEA believes that the benefits of IEPs far outweigh the inconveniences created. The IEP is one of the most important provisions of the law in that it specifies what is the "appropriate education" for a particular handicapped child. Therefore, NEA recommends that current regulations regarding the IEPs be retained.

- The importance of requiring public agencies to hold the IEP meeting within 30 calendar days of a determination that a child needs special education and related services cannot be stressed enough. By mandating a timely, official disposition of cases, each child is guaranteed access to adequate special education without undue delay.

  Moreover, these IEP meetings serve as the crucial nexus between teacher and parent. The establishment of true working relationships as a result of the meetings creates a trust, a fiduciary obligation, if you will, between active working partners in the education of these special children. Therefore, the NEA refuses to accept the proposed deletion of the thirty-day requirement for IEP meetings.

In the development of the IEP, the requirement for the participation of specially trained support personnel, such as psychologists, has been relegated to a nonbinding guideline. Moreover, there are no requirements that the teacher(s) most familiar with the learning problems faced by the student be member(s) of the IEP team. The omission of a specialist and the appropriate classroom teacher from IEP development will result in inadequate programs for handicapped students.

It should be reiterated at this point that the need to guarantee handicapped children adequate public education was only recently recognized by the Congress. Consequently the need remains for continuous and constant monitoring, responsibilities performed by the state advisory panels. The views of these state advisory panels must at present be taken into consideration before a state department of education may implement any regulations. Such panels under current regulations are to be composed of individuals involved or concerned with the education of handicapped children, specifically including "special and regular education teachers." The proposed regulations attempt to retreat from the original intention of the drafters which expressly included special and regular teachers on the state advisory panels. It would be a callous disregard of the practical realities of educating handicapped children to exclude the specific language mandating the participation of regular teachers on the panels.

- Finally, the proposed regulations delete all specific administrative obligations of the state advisory panels. The NEA believes that this move would seriously hamper the creation and maintenance by the panels of adequate records by which the purposes of accountability are served.

NEA and I are willing to respond to any questions the Subcommittee may have, and we stand ready to do all in our power to prevent the adoption of the proposed regulations. Once again we commend the Chairman for his expeditious convening of these hearings which provide an excellent forum for a concerned teacher like myself to share with you my views.

Thank you.

Georgia L. Gibson
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Classroom teacher (special education)
Edgewood Regional Senior High School
Atco, New Jersey
1964-present

- Member, NEA Board of Directors, 1975-present
- New Jersey State Advisory Council on P.L. 94-142, 1974-present
- Chair, NEA Special Ad Hoc Committee on Special Education, 1978-1980
- Member, Marketing Linkage Project for Special Education (LINC)
- Member, New Jersey Study Committee on Special Education

Graduate of Southern Connecticut State College
Graduate Work at Glassboro State and Monmouth Colleges (N.J.)
Certified elementary 1-8 and special education K-12

Teacher of educably mentally retarded, Edgewood Regional Senior High School, 18 years
Taught 5 years in a Connecticut private school for the handicapped
Taught 3 years in a Mississippi private school for the handicapped

## B-30. Education for All Handicapped Children*

The National Education Association supports a free, appropriate public education for all handicapped students in a least restrictive environment, which is determined by maximum teacher involvement. However, the Association recognizes that in order to implement federal special education legislation effectively—

a. The educational environment, using appropriate instructional materials, support services, and pupil personnel services, must match the learning needs of both the handicapped and the nonhandicapped student.
b. Suspension and expulsion policies and practices used by local education agencies must be applied consistently to both handicapped and nonhandicapped students where misconduct is shown to be unrelated to either the handicapping condition or to improper placement.
c. Regular and special education teachers, pupil personnel staff, administrators, and parents must share in planning and implementing programs for the handicapped.
d. All staff must be adequately prepared for their roles through professional development programs.
e. The appropriateness of educational methods, materials, professional development, and supportive services must be determined in cooperation with classroom teachers.
f. The classroom teacher(s) must have an appeal procedure regarding the implementation of the individualized education program, especially in terms of student placement.
g. Modifications must be made in class size, using a weighted formula, scheduling, and curriculum design to accommodate the demands of each individualized education program.
h. There must be a systematic evaluation and reporting of program development using a plan that recognizes individual differences.
i. Adequate funding must be provided and then used exclusively for handicapped students, including preschool children.
j. The classroom teacher(s), both regular and special education, must have a major role in determining individual education programs.
k. Adequate released time or funded additional time must be made available for teachers so that they can carry out the increased demands placed upon them by federal special education legislation.
l. Staff must not be reduced.
m. Additional benefits negotiated for handicapped students through local collective bargaining agreements must be honored.
n. Communications must be maintained among all involved parties.
o. All teachers must be accorded by law the right of dissent concerning each individualized education program, including the right to have the dissenting opinion recorded.
p. Individualized education programs should not be used as criteria for the evaluation of teachers.
q. Teachers, as mandated by law, must be appointed to local and state advisory bodies on special education.
r. Teachers must be allowed to take part in the U.S. Office of Special Education and Rehabilitative Services' on-site visits to states. Teachers should be invited to these meetings.
s. Incentives for teacher participation in professional development activities should, as mandated by law, be made available for teachers.
t. Local associations must be involved in monitoring school systems' compliance with federal special education legislation.
u. Student placement must be based on individual needs rather than on space availability.(78, 82)

**Senator WEICKER.** Thank you very much, Georgia. Let me say that the purpose of convening these hearings right away upon receipt of the regulations was to alert the whole country as to what it is that is being done. A very valuable role can be played by NEA in that regard.

Now, I understand there are some types that are sort of sitting on the fence to see which way the wind blows. Nobody had better sit on that fence too long because, believe me, all of a sudden these will be law. The time to get after it is right now and let everybody know what is going on right now.

I will give you a little example in your own area of expertise as to how one block is built upon another. I am beginning to understand what is going on here. I attended the Appropriations Subcommittee hearing on the 1982 budget and I noticed there was a big reduction in there for training for special ed teachers, OK?

I fought it and I lost, but now I know why. They are going to go ahead and amend the regulations so you are not going to need special ed teachers.

**Ms. GIBSON.** That is right.

**Senator WEICKER.** I was also told, to show the great amount of expertise or backgrounding that goes into these great decisions, that, well, we have a surplus of regular teachers. Why not let them go ahead and do the teaching of the special ed teachers?

Now, you have a very special care, all of you, as I know you realize. The people that you speak for are the weakest elements of our society. Indeed, they probably have zero clout at the polls. That puts all the more obligation on you and I—those of us who might not be in the majority or have the numbers—to do everything we can to see to it that they are not trampled on.

**Ms. GIBSON.** May I ask you one thing, sir? Why do we have to be humble in the law when we know what we are doing is right?

**Senator WEICKER.** Why do we have to be what?

**Ms. GIBSON.** Why do we have to be humble in law, which was one of Secretary Bell's statements? Why do we have to be humble in the law when we know what we are doing is right? I say that we just go for it all the way.

**Senator WEICKER.** Georgia, I have gone for it my whole life. That is what gets me into trouble, for heaven's sakes. [Laughter.]

I am all for it.

**Ms. GIBSON.** We will keep you company, then.

**Senator WEICKER.** Do not stop; just go for it.

**Mr. MARCHAND.** Our next witness, Senator, is Justine Maloney, who represents the Association for Children with Learning Disabilities. She, herself, is the parent of a multihandicapped daughter who is in special education. She serves as the State president of the Virginia ACLD. She is a member of the National Governmental Affairs Committee, and is ACLD's representative to our consortium.

**Ms. MALONEY.** Thank you very much for letting us speak to you, Senator Weicker. It is great to have ACLD, a parent-led organization, coming forth to speak. I might just add that it feels like 1984. The local school systems and the State boards of education and the State school systems described by Secretary Bell are not the ones I know about.

ACLD worked with many other groups to help pass Public Law 94-142, the Education for All Handicapped Children Act of 1975. This law was necessary because State and local school systems could not, or would not, provide an appropriate education for handicapped children.

Even now, although the regulations have been in effect since 1977, there are school systems which are reluctant to provide a free, appropriate public education for handicapped children. As president of the Virginia ACLD, I received many phone calls and letters from parents asking for help. Thanks to the regulations now in force, I could always tell them where to go and how to get the help they need.

Today, we are considering regulations proposed by the Department of Education on August 4, 1982. I have spent the past several days reading those proposed regulations, and on behalf of ACLD, I can say that I am heartsick and deeply distressed at their content. They do not attempt to deal with the problems described by both parents and administrators at the congressional oversight hearings. They are more concerned with returning responsibility for special education to the States and with limiting the opportunities of handicapped children.

Thus, for example, the new State plan regulations allow the States to determine how best to provide required information, policies, and procedures. Data collection and reporting requirements are reduced, especially in the areas of the full educational opportunity goal, child identification, location and evaluation, and the least restrictive environment.

As a parent, I interpret those proposed regulations as a message to State administrators. The Department of Education does not want to be bothered with these details and will help by cutting down the regulations as much as possible. As the representative of Virginia ACLD on a State-level, blue-ribbon task force to study the least restrictive environment, I know that the final report of that task force is being delayed pending what happens at the Federal level.

To indicate that the proposed regulations will limit the opportunities of handicapped children, I would like to point out what they do to the least restrictive environment concept.

The proposed regulations include the old—

> Each public agency shall insure that, one, to the maximum extent appropriate, handicapped children are educated with children who are not handicapped; two, separate classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

That is very nice, but where are the requirements from the current regulations that insure a least restrictive environment? I might add that for some children, the most restrictive environment may be the regular classroom.

The old regulations had the ruling:

> Each public agency shall, one, insure that a continuum of alternative placements is available to meet the needs of the handicapped children for special education and related services [deleted].

> Make provision for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with the regular classroom placement [deleted].
>
> Insure that each child's educational placement is as close as possible to the child's home [deleted].
>
> Insure that unless the IEP requires otherwise, the child is educated in the school he or she would attend if not handicapped [deleted].
>
> Insure that each handicapped child participates with nonhandicapped children in nonacademic and extracurricular serves and activities to the maximum extent appropriate to the needs of the child [deleted].

Instead, the proposed regulations add the addendum that if the handicapped child interferes with the education of other children in the regular classroom, he may be removed.

But the new regulation that really chilled my bones and brought back memories of special education classes stuck down in the boiler room away from all of the other students is the following:

> Nothing in the act or the regulations in this part may be read to affect any legal obligation of a public agency to make available to handicapped children the educational programs and services made available to nonhandicapped children by the agency, including curricular options, extracurricular and nonacademic services, physical education, school health services, social work services in schools, and parent counseling and training.

I might add that Secretary Bell mentioned section 504 this morning, and we all know what they are trying to do with section 504.

I could go on. The sections on related services are just as devastating to the promise of supplemental aids and services to help the handicapped children benefit from special education.

I compared the current and the proposed regulations covering evaluation and the IEP process. Here, too, the protection of the rights of handicapped children and their parents are eroded. Those are attached to my statement.

On behalf of ACLD, I request that these proposed regulations be withdrawn and redone.

[The prepared statement of Ms. Maloney follows:]

*A C L D*

***An Association For Children and Adults With Learning Disabilities***

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ACLD STATEMENT ON THE PROPOSED REGULATIONS FOR P.L. 94-142 August 10,1982

SENATOR WEICKER, SECRETARY BELL, LADIES AND GENTLEMEN. I AM MRS. ARTHUR MALONEY OF ARLINGTON,VIRGINIA. I AM SPEAKING ON BEHALF OF THE ASSOCIATION FOR CHILDREN AND ADULTS WITH LEARNING DISABILITES, ACLD. I AM A MEMBER OF THE ACLD GOVERNMENT AFFAIRS COMMITTEE, THE IMMEDIATE PAST PRESIDENT OF THE VIRGINIA ACLD, AND A MEMBER OF THE ARLINGTON COUNTY ACLD. I AM ALSO THE PARENT OF A HANDICAPPED CHILD.

ACLD IS A NATIONWIDE PARENT-LED ORGANIZATION WHICH HAS LONG BEEN CONCERNED WITH OBTAINING APPROPRIATE EDUCATION FOR CHILDREN WITH LEARNING DISABILITIES. AS PARENTS WE SHARE COMMON CONCERNS WITH PARENTS OF ALL HANDICAPPED CHILDREN, AND WE WORKED TOGETHER TO HELP ASSURE PASSAGE OF PUBLIC LAW 94-142, THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975.

THIS LAW WAS NECESSARY BECAUSE STATE AND LOCAL SCHOOL SYSTEMS COULD NOT OR WOULD NOT PROVIDE AN APPROPRIATE EDUCATION FOR HANDICAPPED CHILDREN. EVEN NOW, ALTHOUGH THE CURRENT REGULATIONS HAVE BEEN IN EFFECT SINCE 1977, THERE ARE SCHOOL SYSTEMS WHICH ARE RELUCTANT TO PROVIDE A FREE APPROPRIATE PUBLIC EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT FOR HANDICAPPED CHILDREN. AS PRESIDENT OF THE VIRGINIA AFFILIATE OF ACLD, I RECEIVED MANY PHONE CALLS AND LETTERS FROM PARENTS ASKING FOR HELP. THANKS TO THE REGULATIONS NOW IN FORCE, I COULD ALWAYS TELL THEM HOW AND WHERE TO GET THE HELP THEY NEEDED.

THE CURRENT REGULATIONS ARE NOT PERFECT, AS TESTIMONY AT CONGRESSIONAL OVERSIGHT HEARINGS HAVE INDICATED. TODAY WE ARE CONSIDERING REGULATIONS PROPOSED BY THE DEPARTMENT OF EDUCATION ON AUGUST 4,1982.

I HAVE SPENT THE PAST SEVERAL DAYS READING THESE PROPOSED REGULATIONS AND ON BEHALF OF ACLD I CAN SAY THAT I AM HEARTSICK AND DEEPLY DISTRESSED AT THEIR CONTENT. THEY DO NOT ATTEMPT TO DEAL WITH THE PROBLEMS DESCRIBED BY BOTH PARENTS AND ADMINISTRATORS AT THE OVERSIGHT HEARINGS. THEY ARE MORE CONCERNED WITH RETURNING RESPONSIBILITY FOR SPECIAL EDUCATION TO THE STATES AND WITH LIMITING THE OPPORTUNITIES OF HANDICAPPED CHILDREN.

THUS, FOR EXAMPLE, THE NEW STATE PLAN REGULATIONS (300.11, 300.15-.59) ALLOW THE STATES TO DETERMINE HOW BEST TO PROVIDE REQUIRED INFORMATION, POLICIES AND PROCEDURES. DATA COLLECTION AND REPORTING REQUIREMENTS ARE REDUCED - ESPECIALLY IN THE AREAS OF THE FULL EDUCATIONAL OPPORTUNITY GOAL; CHILD IDENTIFICATION, LOCATION, AND EVALUATION; AND THE LEAST RESTRICTIVE ENVIRONMENT. AS A PARENT, I INTERPRET THESE PROPOSED REGULATIONS AS A MESSAGE TO STATE ADMINISTRATORS- THE DEPARTMENT OF EDUCATION DOESN'T WANT TO BE BOTHERED WITH THOSE DETAILS AND WILL HELP BY CUTTING DOWN ON THE REGULATIONS AS MUCH AS POSSIBLE. AS THE REPRESENTATIVE OF VIRGINIA ACLD ON A STATE-LEVEL BLUE-RIBBON TASK FORCE TO STUDY THE LEAST RESTRICTIVE ENVIRONMENT, I KNOW THAT THE FINAL REPORT OF THAT TASK FORCE IS BEING DELAYED PENDING WHAT HAPPENS AT THE FEDERAL LEVEL.

TO INDICATE THAT THE PROPOSED REGULATIONS WILL LIMIT THE OPPORTUNITIES OF HANDICAPPED CHILDREN, I WOULD LIKE TO POINT OUT WHAT THEY DO TO THE LEAST RESTRICTIVE ENVIRONMENT CONCEPT.

THE PROPOSED REGULATIONS DO INCLUDE THE STATEMENT THAT

"EACH PUBLIC AGENCY SHALL ENSURE THAT

(1) TO THE MAXIMUM EXTENT APPROPRIATE, HANDICAPPED CHILDREN ... ARE EDUCATED WITH CHILDREN WHO ARE NOT HANDICAPPED; AND

(2) SEPARATE CLASSES, SEPARATE SCHOOLING, OR OTHER REMOVAL OF HANDICAPPED CHILDREN FROM THE REGULAR EDUCATIONAL ENVIRONMENT OCCURS ONLY WHEN THE NATURE OR SEVERITY OF THE HANDICAP IS SUCH THAT EDUCATION IN THE REGULAR CLASSES WITH THE USE OF SUPPLEMENTARY AIDS AND SERVICES CANNOT BE ACHIEVED SATISFACTORILY." (300.160)

THAT'S VERY NICE...BUT WHERE ARE THE REQUIREMENTS FROM THE CURRENT REGULATIONS THAT ENSURE A LEAST RESTRICTIVE ENVIRONMENT? THE ONES THAT READ

"EACH PUBLIC AGENCY SHALL

1) ENSURE THAT A CONTINUUM OF ALTERNATIVE PLACEMENTS IS AVAILABLE TO MEET THE NEEDS OF HANDICAPPED CHILDREN FOR SPECIAL EDUCATION AND RELATED SERVICES"

- DELETED

2) MAKE PROVISION FOR SUPPLEMENTARY SERVICES (SUCH AS RESOURCE ROOM OR ITINERANT INSTRUCTION) TO BE PROVIDED IN CONJUNCTION WITH REGULAR CLASS-PLACEMENT." DELETED

3) INSURE THAT EACH CHILD'S EDUCATIONAL PLACEMENT IS AS CLOSE AS POSSIBLE TO THE CHILD'S HOME." DELETED

4) INSURE THAT UNLESS THE IEP REQUIRES OTHERWISE, THE CHILD IS EDUCATED IN THE SCHOOL HE OR SHE WOULD ATTEND IF NOT HANDICAPPED." DELETED

5) INSURE THAT EACH HANDICAPPED CHILD PARTICIPATES WITH NONHANDICAPPED CHILDREN IN NONACADEMIC AND EXTRACURRICULAR SERVICES AND ACTIVITIES TO THE MAXIMUM EXTENT APPROPRIATE TO THE NEEDS OF THE CHILD." DELETED

INSTEAD, THE PROPOSED REGULATIONS ADD THE REGULATION THAT " THE PUBLIC AGENCY MAY CONSIDER A SUBSTANTIAL AND CLEARLY ASCERTAINABLE DISRUPTION OF THE EDUCATIONAL SERVICES PROVIDED TO OTHER CHILDREN IN THE SAME CLASSES".AS A FACTOR TO DETERMINE THAT THE CHILD'S EDUCATION CANNOT BE ACHIEVED SATISFACTORILY IN THE REGULAR CLASS.

BUT THE NEW REGULATION THAT REALLY CHILLED MY BONES AND BROUGHT BACK MEMORIES OF SPECIAL EDUCATION CLASSES STUCK DOWN IN THE BOILER ROOM AWAY FROM ALL THE OTHER STUDENTS IS THE FOLLOWING (300.113):

"NOTHING IN THE ACT OR THE REGULATIONS IN THIS PART MAY BE READ TO AFFECT ANY LEGAL OBLIGATION OF A PUBLIC AGENCY TO MAKE AVAILABLE" TO HANDICAPPED CHILDREN EDUCATIONAL PROGRAMS AND SERVICES MADE AVAILABLE NONHANDICAPPED CHILDREN BY THE AGENCY, INCLUDING CURRICULAR OPTIONS, EXTRA-CURRICULAR AND NONACADEMIC SERVICES, PHYSICAL EDUCATION, SCHOOL HEALTH SERVICES, SOCIAL WORK SERVICES IN SCHOOLS, AND PARENT COUNSELING AND TRAINING."

LET ME READ THAT AGAIN.

I COULD GO ON. THE SECTIONS ON RELATED SERVICES ARE JUST AS DEVASTATING TO THE PROMISE OF SUPPLEMENTAL AIDS AND SERVICES TO HELP THE HANDICAPPED CHILD BENEFIT FROM SPECIAL EDUCATION.

I COMPARED THE CURRENT AND THE PROPOSED REGULATIONS COVERING EVALUATION AND THE IEP PROCESSES. HERE TOO, THE PROTECTION OF THE RIGHTS OF HANDICAPPED CHILDREN AND THEIR PARENTS ARE ERODED.

ON BEHALF OF ACLD I REQUEST THAT THESE REGULATIONS BE WITHDRAWN AND REDONE.

VACLD An Affiliate of AC.L.D, An Association for Children & Adults with Learning Disabilities.

LEGISLATIVE MEMO # 5 August 9, 1982

## HOW PROPOSED REGULATIONS "WEAKEN THE KEY PROCEDURAL FUNCTIONS AND RIGHTS OF HANDICAPPED CHILDREN AND THEIR PARENTS"

## ILLUSTRATED BY CHANGES IN THE EVALUATION, DUE PROCESS, AND IEP REGULATIONS.

DUE PROCESS (300.149, Prop. 121.a 506,507,508 current)

The due process hearing is expensive and traumatic. The proposed regulations make it even harder by DELETING THE REQUIREMENTS THAT:

1) public agencies inform parents about available free or low-cost legal services.

2) a list of hearing officers and their qualifications be kept.

3) all evidence to be entered at a hearing be disclosed to the other party at least five days before the hearing.

4) parents have the right to open the hearings to the public and extending the time lines for completing the hearings and making a final report.

EVALUATIONS( 300.139-144, 300.157-.59 proposed
121a.532,533, 534, current;121a. 540-41 LD)

At present, parents must be notified and their consent obtained before their child can be evaluated for special education services or a change of placement is made. Under the proposed regulations, PARENTAL CONSENT IS NO LONGER REQUIRED. Instead, the public agency "shall provide to the parents a reasonable opportunity to initiate a due process hearing".

The proposed regulations delete the current requirements that

1) tests used in evaluating a child be valid for the purpose for which they are used and are administered by qualified personnel.

2) the child be assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing , social and emotional status general intelligence, academic performance, communicative status, and motor abilities.

The proposed regulations LIMIT the multidisciplinary evaluation procedures to those for "children suspected of having severe, multiple, or complex disorders including a specific learning disability. But Before parents of learning disabled children heave a sigh of relief, note that the proposed regulations DELETE THE REQUIREMENT THAT THE MULTIDISCIPLINARY TEAM INCLUDE AT LEAST ONE TEACHER OR SPECIALIST IN THE AREA OF THE SUSPECTED DISABILITY. The proposed regulations also delete the current requirements of classroom observation and written report on a child suspected of having a learning disability.

Since, under the proposed regulations, the child might never be observed by a teacher or specialist in learning disabilities, it is hard to see how the evaluation can tell the difference between a child whose discrepency between achievement and ability is "verifiable and severe and due to a specific learning disability"and a child whose discrepency is "primarily the result of emotional disturbance; environmental,cultural or economic disadvantage; inappropriate instructional programs; lack of readiness; lack of motivation; delayed maturation; or factors external to the child.

The definition of "severe" learning disability is also very vague. Must the child be performing below a certain grade level in one or more subjects to have severe LD? Does the child of above average intelligence who is struggling to keep at grade level have severe LD? Must the child with "mild" LD flounder without help until he has a "severe" LD problem? The latter seems not only cruel but not "cost effective".

If parents are dissatisfied with the school's evaluation, they have the right to ask for an independent evaluation at public expense. The school always had the right to refuse, and a due process hearing could be held to settle the issue. Therefore the proposed regulations notation that parents must call for a due process to get an independent evaluation at public expense changes nothing- but does indicate the Department of Education's attitude toward parents. This part of the proposed regulations DELETES the requirement that the schools, when asked, must tell parents where independent evaluations may be obtained.

## INDIVIDUALIZED EDUCATIONAL PROGRAM (300.125 prop 121a.343-344_current)

According to the Department of Education, four million children are now being served under the Education of All Handicapped Children ACt. The IEP is the tool by which the free appropriate education is provided to handicapped children, and it is in this section, especially the LRE and Related Services that the proposed regulations strike most cruelly.

The current requirement that
1) an IEP be prepared within 30 days for a child initially found to be eligible for special education services - DELETED
2) a member of the team which helped evaluate the child be present at the initial IEP meeting - DELETED

## LEAST RESTRICTIVE ENVIRONMENT OF IEP (300.160 proposed 121a.551-3;)

The Least Restrictive Environment says that
1) to the maximum extent appropriate, handicapped childrne are educated with children who are not handicapped; and
2) special classes, separate schooling, or other removal of handicapped children from regular educational environment occurs only when the nature and severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Lets see how the proposed regulations carry out that mandate: The public agency shall
1) ensure that a continuum of services is available; DELETED
2) make provision for supplementary services (resource room, itinerant teacher) to the regular classroom - DELETED
3) ensure that handicapped children be placed as close as possible to their home-DELETED
4) ensure that, unless the IEP requires otherwise, the handicapped children be educated in the school they would attend if not handicapped. DELETED
5) ensure that handicapped children participate in nonacademic programs and activities offered to nonhandicapped children to the extent appropriate. DELETED

## LEAST RESTRICTIVE ENVIRONMENT ( 300.161, 300.113 300.4(b)(2)

Instead the proposed regulation has been added: " Among other factors used in determining whether a handicapped child's education in a regular classroom with the use of supplementary aids and services ...cannot be achieved satisfactorily, the public agency MAY CONSIDER A SUBSTANCIAL AND CLEARLY ASCERTAINABLE DISRUPTION OF THE EDUCATIONAL SERVICES PROVIDED TO OTHER CHILDREN IN THE SAME CLASS.

The intent of the proposed regulations can be read in the change in the definition of a handicapped child from "one whose impairment adversely affects educational performance" to one"whose impairment adversely affects the child's ability to benefit from a regular education program. This represents an effort to substitute judgment for measurement of performance.

But the proposed regulation that really chills me and bodes ill both for participation of handicapped children in regular programs and in the mandate for offering adaptive programs is the following. READ IT VERY CAREFULLY_ especially in view of the deletion of school health, school social workers, and parent counseling from related services.

NOTHING IN THE ACT OR THE REGULATIONS IN THIS PART MAY BE READ TO AFFECT ANY LEGAL OBLIGATIONS OF A PUBLIC AGENCY TO MAKE AVAILABLE TO HANDICAPPED CHILDREN EDUCATIONAL PROGRAMS AND SERVICES MADE AVAILABLE TO NONHANDICAPPED CHILDREN BY THE AGENCY, INCLUDING CURRICULAR OPTIONS, EXTRA_CURRICULAR AND NONACADEMIC SERVICES,PHYSICAL EDUCATION, SCHOOL HEALTH SERVICES, SOCIAL WORK SERVICES IN SCHOOLS, AND PARENT COUNSELING AND TRAINING.

This doesn t mean that your child won't get these services, It means that he or she will have no legal right to them..

## RELATED SERVICES (300.4 (b)(10) proposed; 121a. 13 current)

The regulations cannot delete what is specifically named in the law, but the proposed regulations do DELETE the definitions of those services. The also DELETE school health services, social work services in the schools and parent counseling and training. Moreover: In determining whether a service is required to assist a handicapped child to benefit from special education, in developing the IEP, a public agency is NOT PRECLUDED FROM ESTABLISHING REASONABLE LIMITATIONS RELATING TO:

1) THE LEVEL,FREQUENCY, LOCATION, AND DURATION OF THE SERVICES REQUIRED;
2) THE QUALIFICATIONS OF THE PROVIDERS OF THESE SERVICES;
3) THE SERVICES REQUIRED IN LIGHT OF THE EDUCATIONAL PLACEMENT APPROPRIATE FOR THE CHILD.

Won't the IEP's be interesting under the proposed regulations.

I hope you agree with me that the proposed regulations will really hurt the handicapped child and greatly limite the ability of the parents to participate in decisions on a "free appropriate public education."

PS. I haven't studied the rest of the proposed regulations carefully--- but they are setting up to have parents or someone else pay for "non-medical" an d "optional" services in private residential placements.

Justine Maloney- Govt. Affairs Liaison

**Senator WEICKER.** You know, I could not help but find some irony—and you mentioned it in your very articulate statement—that the very same philosophers in this administration that want to delete the current requirement that a disabled child should attend the school closest to his or her home wherever possible are the same philosophers who want to make sure that every normal child should attend the school closest to his or her home wherever possible. That is rather interesting and, I think, one of the great ironies of this administration in the legislation which was just passed on the floor of the Senate and the proposed change in the regulations that has taken place here insofar as the retarded and disabled are concerned. Apparently, they are the ones that can go ahead and travel, and those that can walk are the ones that have to be next to home. I do not quite understand it, but then I do not understand much of what the administration is doing anyway.

All right. Let us proceed, then, with the rest of the panel.

**Mr. MARCHAND.** Our next witness is Dr. Bette Hamilton, who is the education director for the Children's Defense Fund, which is a national nonprofit charity dedicated to improving the lives of children. The education program at CDF is focused in three generic areas: special education, compensatory education, and vocational education.

Dr. Hamilton has been the assistant vice president for Governmental Relations at the American Association of Community and Junior Colleges, and previous to that she served as a special assistant to the Deputy Commissioner for Post-Secondary Education in the U.S. Office of Education. She is also the author of numerous articles and the recipient of the University of Michigan's Wilbur Cohen Award for innovations and policies affecting health, education, and welfare.

**Dr. HAMILTON.** Thank you. Senator Weicker, we are most appreciative of this opportunity to express our grave concern about the proposed regulations to implement Public Law 94-142. We think it is very important to underline the congressional intent of Public Law 94-142, which was to guarantee that handicapped children would be provided a free, appropriate education in a least restrictive environment.

This law came about only because of State and local neglect, and we have decades of testimony and volumes of testimony to underscore that only 7 years ago, over one million children in this country did not go to school at all, and over 3.5 million children received only inappropriate and piecemeal education programs.

Congress was very wise to guarantee the rights of children by providing for participation of parents throughout the special education provisions of Public Law 94-142.

The Reagan administration has tried unsuccessfully for the past 2 years to do everything it can to eliminate this law. This is its latest attempt, and it is a feeble substitute for what it really wants. Nevertheless, the aggregate effect of all these proposed changes on children will mean that some handicapped children will not go to school at all, many more will be denied appropriate education, and many more will be harmed.

Public Law 94-142 is an extremely profamily piece of legislation. It currently, under the existing regulations, requires parental consent, which is a very important provision both in the evaluation and at the end of the IEP meeting before a child is placed in a regular classroom. In fact, less than one-half of 1 percent of all children have felt aggrieved because of their IEP's and their parents have had to go to court and file a civil action.

We submit that the proposed regulations, in tandem, will, contrary to what Mr. Bell said, really lead to more acrimonious relationships between parents and schools. They will lead to more due process hearings—and the hearing rights of parents are further restricted in these proposed regs—and will, in the end, lead to more costly litigation—costly both for the parents and for the schools.

We ask the subcommittee and the Senate to not allow these proposed rules to become final. We have been asked by the subcommittee staff to focus on two primary issues: the provision of a free, appropriate education, and the provision of related services.

The proposed rules undermine the rights of handicapped children in several different ways. First, in regard to a free, appropriate public education which is determined by the IEP, participation rights for parents are weakened. Removing requirements that school districts document attempts to contact parents, as well as no longer specifying the content of notices to parents, will mean that some school officials in some places will not make an honest effort to contact parents.

I am not speaking out of the blue here. We already know that there are cases under the current regulations where parents are bypassed and where IEP meetings are held without the parent being contacted. At least under the existing requirements, it is more difficult for that to happen, and there is nothing to justify some of the proposed changes.

Removal of parental consent coupled with deleting of recordkeeping requirements to document that parents have been notified and contacted and more restrictions on parents' rights in the due process hearings will mean that some handicapped children are denied a free and appropriate education. We will have more litigation, generally.

Requirements for evaluations are changed radically in these proposed rules, and yet the changes appear very subtle on the surface. Tests no longer would be required to be validated or administered by qualified personnel. This can only lead to more misclassification of black and minority children into special education programs.

We also have a concern that some children would be denied a free, appropriate public education due to improper educational placements to begin with, which fosters inappropriate behavior, allowing schools to routinely suspend and expel them. These proposed changes would allow schools to kick out kids that they did not want to educate in the first place.

Lastly, the proposed rules, if they become final, will mean that some children will be denied a free, appropriate public education because of restrictions on related services. Related services are restricted in numerous ways by the proposed rules.

First, the States define what related services are up front, and they can prevent certain services from being provided. Second, local educational agencies can put reasonable limits on related services at the IEP meeting. The phrase "reasonable limits" is not defined in these proposed rules. We are afraid that our experience tells us that this, in effect, will mean "what is already available at the local level," whether it is speech therapy once a week when the child needs it four times a week. This will be what is determined to be a reasonable limit.

We have a particular concern about the deletion of school health services as related services. This could mean that some whole categories of children who are diabetic, epileptic, or who need a pill during the day or an insulin shot, would be denied access to school completely.

In our opinion, these proposed rules violate section 504 and they create serious harm for certain children. We ask that the Senate and the Congress send a message to the Department of Education to withdraw these rules. They are totally unacceptable, they are horrendous, and they should not be tolerated in this day and age. We submit that the Department of Education needs to go back to the drawing board and start over again.

Thank you.

[The prepared statement of Dr. Hamilton follows:]

# TESTIMONY OF THE CHILDREN'S DEFENSE FUND

Before the

SUBCOMMITTEE ON THE HANDICAPPED

COMMITTEE ON LABOR AND HUMAN RESOURCES

UNITED STATES SENATE

August 10, 1982

Presented by

Bette Everett Hamilton, Ph.D.

Education Director

Mr. Chairman and Members of the Subcommittee. The Children's Defense Fund (CDF) is most appreciative of this opportunity to express our concern about the proposed regulatory changes to implement P.L. 94-142, the Education for All Handicapped Children Act. Congress enacted P.L. 94-142 because of an egregious situation. More than one million handicapped children were excluded entirely from public school and more than half of the estimated eight million handicapped children in the United States were not receiving appropriate services.[1] Congress found that this failure to appropriately educate handicapped children harmed both the children and their families and, furthermore, resulted in substantial costs to society.[2]

Public Law 94-142 gave handicapped children the legal right to an appropriate education in the least restrictive environment at no cost to the parents. It also established individualized education programs (IEPs) for each student and established a process by which State and local educational agencies may be held accountable for providing educational services for all handicapped children. Parents became integral partners with teachers and school officials in planning the educational placements for their children. When needed, related services such as transportation, speech therapy, audiology, psychological services, physical and occupational therapy were to be provided to assist handicapped children to benefit from special education.

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[1] Public Law No. 94-142 3(a), 89 Stat. 773(1976) (reprinted in notes to 20 U.S.C. 1401).

[2] Senate Report, supra note 2, at 9; House Report, supra note 2 at 11, 24; 121 Cong. Rec. 19482(1975) (Sen. Randolph); 37411 (1975) (Sen. Humphrey); 121 Cong. Rec. 22541(1975)(Rep. Harkin).

Public Law 94-142 is only seven years old, and was fully implemented only four years ago. The Reagan Administration has tried unsuccessfully for the past two years to repeal P.L. 94-142. This year it is trying to accomplish the same end by virtually gutting many of the law's provisions. The proposed regulations defy Congressional intent and would lead to more acrimonious relationships between parents and school officials, resulting in more due process hearings and litigation. The proposed rules should not be allowed to become final.

While we have been asked by the staff of the Subcommittee to focus our testimony on two important provisions, (1) the availability of a Free, Appropriate Public Education (FAPE), and (2) Related Services, we find it necessary to tell the Subcommittee that we have problems with most of the proposed regulatory changes which in the main take away hard-earned protections of children and parents, and if allowed to become final, will certainly mean that handicapped children will find it more difficult to receive the programs and services to which they are legally entitled.

In particular, CDF opposes numerous provisions of the Notice of Proposed Rulemaking (NPRM) which weaken the right of parents to be equal partners with the schools in decisions affecting the evaluation, educational placement, and services provided handicapped children. CDF opposes the deletion of parental consent before a placement evaluation and an initial placement in a special education program; the deletion of the 30 day timeline between the evaluation and the IEP meeting; reduced requirements to ensure parental participation at IEP meetings; elimination of parents' right to open due process hearings to the public and to have access to all evidence before a hearing; and we oppose the authorization to charge parents for a portion of the services a child receives while placed in a residential program. CDF also opposes the proposed regulatory changes which would thwart Congressional intent to educate handicapped children "to the maximum extent appropriate" with non-handicapped children", (Least Restrictive Environment, LRE) by removing present requirements that schools provide handicapped children with a continuum of placements and services, and educate a child as close to home as possible, while adding a new provision that the effect on non-handicapped children be assessed before a handicapped child is placed in a regular classroom. The proposed regulations would also perpetrate more misclassification of blacks and minorities by no longer requiring that evaluation instruments be validated or administered by "qualified" personnel. The Children's Defense Fund will be submitting extensive comments on these and other provisions of the proposed rules and we will forward our analyses to each of the members of the Subcommittee.

With regard to the provisions of a Free Appropriate Public Education and Related Services, the Notice of Proposed Rulemaking (NPRM) makes considerable changes that will alter the special education and services that handicapped children presently receive.

FREE, APPROPRIATE, PUBLIC EDUCATION

The statute guarantees each handicapped child the right to a Free, Appropriate, Public Education (FAPE) and the proposed regulations undermine that right in several different ways. First, the provision of a free, appropriate public education is determined by the individualized education program, IEP. The NPRM makes several changes in the IEP process that weaken the role of parents to actively participate in the IEP meeting and protect the rights of the child. Removing requirements that school districts document attempts to contact parents as well as no longer specifying the content of notices to parents will mean that some schools will not make an honest effort to notify or contact parents. A few phone calls during the day while the parent is at work could suffice. Removal of parental consent for the evaluation and initial placement, deleting all record-keeping documenting attempts to notify and contact parents about the IEP meeting, and more restrictions on the parents' rights in due process hearings will mean that some handicapped children are denied FAPE.

Second, if these proposed rules become final, some children will be denied a FAPE due to improper evaluations. Tests no longer would have to be validated or administered by "qualified" personnel. And a member of the evaluation team or someone familiar with the evaluation results no longer need attend the IEP meeting.

Third, for a child who is severely and multiply handicapped and for whom the evaluation team and parents determine must have a residential placement, in order to receive and benefit from a special education, the proposed regulations would allow public agencies to charge parents fees for the "non-medical" services that a child receives while in residence. Yet, such services, as help with feeding the child or with bathroom privileges, are a necessary expense in order for certain children to receive a special education. Charging parents for these services violates their child's right to a free appropriate public education at no expense to the parents, and will mean that some children will be denied access to those necessary residential placements. The proposed regulations could have the effect of breaking up families, as some children would become wards of the states, vacated by parents unable to pay for such services.

Fourth, under the proposed rules, some handicapped children who become the victims of numerous, serial suspensions, which do not trigger a re-evaluation of special education placement, will be denied a FAPE. Other children, with the due process hearing rights of parents restricted, may find themselves kicked out of school entirely, with no requirement that schools provide them alternative learning arrangements outside the school setting.

Fifth, if the NPRM becomes final, some children will be denied a FAPE because of new restrictions on related services.

## RELATED SERVICES

The proposed regulations substantially change the provision of related services. First, states would be allowed to define related services, and by narrowing these definitions, fewer services will be provided. Second, local educational agencies can put "reasonable" limits on related services written into IEPs. The regulations do not define "reasonable", and many children will find that "reasonable" really means "what is already available." Third, the NPRM deletes school health services (along with parent counseling and training and school social work services) from the list of required related services. The deleting of school health services, coupled with the new definition of "medical" services[3] (services provided by a licensed physician in the existing regulations to services relating to the practice of medicine in the NPRM) will mean that some individual children who have minor handicaps--they are diabetic or epileptic--could no longer go to school at all because they may need a pill during the day or an insulin shot. The changes would certainly deny many children clean-intermittent-catheterization and psychotherapy, in violation of court decisions, and the intent of the law. In CDF's opinion, these regulatory changes violate Section 504 of the Rehabilitation Act of 1973, and could preclude individual children from attending school completely, denying them a free appropriate education.

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[3] Under the statute, medical services do not have to be provided. 20 U.S.C. 1401(17).

There are some who say that new regulations for P.L. 94-142 are needed because some existing provisions are obsolete (e.g., need to conform to EDGAR, three year planning cycle, full educational opportunity goal completed). That may be, but these proposed regulations overwhelmingly destroy many existing protections of handicapped children and would deny a free appropriate public education to some children and seriously harm others. Public Law 94-142 was enacted because of the shameful practices of state and local educational agencies in denying handicapped children their right to an education. Times have not changed so quickly or dramatically to warrant these radical regulatory changes. Even in the best of cases, social progress should not mean that rights no longer need to be honored.

The Children's Defense Fund asks this Subcommittee and the Senate to send a firm message to the Department of Education. These proposed rules are unacceptable and should be swiftly withdrawn. The Department of Education should go back to the drawing board.

## ABOUT THE CHILDREN'S DEFENSE FUND

The Children's Defense Fund is a national non-profit charity dedicated to improving the lives of children through public education, research, legislative and agency reform, and when necessary, litigation. A private organization supported by foundation and corporate grants and individual donations, CDF has never taken government funds. Our interest in education and special education are longstanding. We have addressed the educational problems and rights of handicapped children in our extensive report, Children Out of School in America (1974), and in our parents' handbook, 94-142 and 504: Numbers that Add Up to Educational Rights for Handicapped Children. With the Education Advocates Coalition, CDF published the Report by the Education Advocates Coalition on Federal Compliance Activities to Implement the Education for All handicapped Children Act (1980).

We are the attorneys for the plaintiffs in Mattie T. v. Holladay, (C.A. No. DC-75-31-S N.D. Miss., February 22, 1979), in which we represent all school-aged children classified as handicapped in the State of Mississippi in a successful challenge to the failure of the Mississippi Education Department to enforce the children's right to an appropriate education.

Senator WEICKER. Thank you very much, Bette.

Mr. MARCHAND. Last but certainly not least is Rud Turnbull, who is the secretary of the Association for Retarded Citizens of the United States. Rud is a professor of special education and professor of law at the University of Kansas. He is the parent of a school aged retarded child. He is the author of several books about disability laws, including one on Public Law 94-142, and one on the principle of least restrictive education for handicapped children.

He is a member of the Kansas Developmental Disabilities Council. He has been legal counsel to State and local education agencies in North Carolina and Kansas. He was a member of the regulation input team that developed these regulations that we are talking about today. He has an LLM degree from Harvard Law School.

Mr. TURNBULL. Mr. Chairman, thank you for letting the Association for Retarded Citizens testify. The association will file a formal statement on the record, accompanied by an extensive analysis of the least restrictive alternative as it applies to the education of handicapped children. I would like to summarize our points for you.

You know, Mr. Chairman, the Supreme Court says that in regarding issues about discrimination, we must not pay attention to the intent of the person doing the discrimination, but only to the effect. And I would like to take my cue from the Supreme Court and draw our attention to the effect with respect to three issues; first is the least restrictive education of handicapped children.

The first point is obvious. It seems to me that it emphasizes the stigma of differentness of handicapped children by adding to that burden the stigma of separation.

Second, the proposed regulations ignore the constitutional mandate that governments act in the means that are least restrictive of the educational and other opportunities of handicapped children.

Third, in the aggregate the withdrawal of the present regulations would make it more difficult, not less difficult, to educate handicapped children appropriately, contrary to the intent expressed by the Secretary today.

Fourth, the withdrawal of the present regulations will undercut the right of the handicapped child under the first amendment to associate with nonhandicapped children.

Fifth—and this is one of the ironies that you and I must enjoy—the integration of handicapped children, in fact, leads to nonduplicative costs of education. Separate but different services increase the expense, and so the proposed regulations may actually have the result of increasing the cost of special education.

Sixth, all the efficacy data which is summarized in that policy paper I have filed with your staff favor the present regulations. We know from all the research that handicapped children do not suffer a decrease in their academic achievement as a result of mainstreaming. We know their self-concepts increase. We know that their peer and teacher attitudes increase, and we know that community acceptance increases when children are educated in the community.

With respect to the proposal that the schools consider the potential disruption on nonhandicapped children, I suggest to you, Senator Weicker, that that is exactly the wrong focus. The focus of Public Law 94-142 should be on handicapped children. It should not be on nonhandicapped children or on the ease with which the school system accommodates handicapped children.

What we have here is a major alteration of the intent and the focus of the law. In fact, if a good IEP is done, Senator, it is not necessary to do this kind of regulatory reform.

Seventh, the withdrawal of the requirement of the continuum mandate would have absolutely disastrous effects. What it would basically do is to put us into an "all or nothing" situation where if schools have to give this or that placement, without anything in between, they are going to increase the inappropriate education of handicapped children. It also poses, I think, some problems for the school districts. How in the world are the school districts going to know what they should do to comply with the law when there is no indication of the continuum in the law? I think it would increase the problems the schools have and increase the due process proceedings, and that too is an irony that you and I would have to share.

While the administration might say the withdrawal of continuum requirements pays attention to individualization of education, in fact you and I know very well that it does not.

My last point with respect to LRE is that the section 504 regulations are mandatory on the public schools. They are not, as is suggested by some of the administration's testimony, permissive.

I would now like to address the issue of disciplinary matters affecting handicapped children. The Association for Retarded Citizens believes that the judicial guidelines suffice. A case coming out of your State, *Stewart* v. *Knappe*, is a good case in point. There is uniform, consistent law on that issue. I do not think we have proof of a need to regulate in that area.

But I would suggest that there are two other more fundamental problems. One is that discipline, suspension and expulsion procedures in the law are an excuse for the expulsion of handicapped children. That is, first of all, the most restrictive placement because it is no placement whatsoever.

Second, it violates the intent of the law as I think Congress wrote it. Third, it is contrary to the court decisions on point construing the intent of Congress. And more than that, suggestions on discipline in the regulations may become, and I think would become, a coverup for more restrictive placement of handicapped children, and that is consistent with the withdrawal of all the regulations on LRE.

Finally, with respect to administration and compliance of the law, I think we understand very well from last year that as the Federal pressure is withdrawn, the State and local agencies will backslide in their commitment to handicapped children. Twelve States last year, according to the National Association of State Directors of Special Education, were already prepared to change their regulations and laws as a result of Federal loosening of the pressure that you and others in the Senate prevented.

Second, it would dilute the administration enforcement mechanism. Secretary Bell said in response to a question about enforcement that, quote, "The administration would have to have a talk" with a noncomplying State. I think that is clear evidence that the proposed regulations would dilute enforcement mechanisms.

Third, as the proposed regulations dilute those administrative enforcement mechanisms, they most likely would encourage more due process and not less due process, again contrary to the expressed intent of the administration.

Fourth, the Congress is being basically asked to allocate money to State and local agencies without receiving any assurances on how the funds would be spent. That is hardly a prudent way of dealing with the public.

Fifth, the agencies affected by Federal regulation would basically have to gear up again to a new set of regulations or to an absence of regulation. That would dilute the attention that they are beginning to pay to the quality of education of handicapped children.

Sixth, the Federal standards are imprecise. Frankly, how in the world would an LEA or an SEA know what to do?

Seventh, many of the proposals are non-binding guidelines that I think have the result of gutting the rights of children.

In short, the proposed administrative compliance regulations deny the child his or her due, and they do not guide the schools on what to do. We would hope, Senator, that the administration would withdraw and resubmit new proposed regulations.

I think what we have here is a situation in which the law has enabled and commanded school people to do something, and the enabling and the commanding power of the law is being withdrawn. We are going back to a system of dual education and dual systems of education based on disability, where the principle must be under these regulations that less disabled people are less worthy of our constitutional and educational protection. Thank you very much.

[The prepared statement of Mr. Turnbull follows:]

# TESTIMONY

on

# PROPOSED REGULATIONS

# EDUCATION FOR ALL HANDICAPPED CHILDREN ACT
P.L. 94-142

Respectfully Submitted

to

THE SUBCOMMITTEE ON THE HANDICAPPED

of the

SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

Presented By

THE ASSOCIATION FOR RETARDED CITIZENS OF THE U.S.

Witness:

H. Rutherford Turnbull, III

Secretary, ARC/U.S.
Member, Association for Retarded Citizens'
Governmental Affairs Committee

August 10, 1982

Thank you, Mr. Chairman, for allowing the Association for Retarded Citizens (ARC) U.S. to comment on the proposed regulations for implementing P.L. 94-142, Education for All Handicapped Children Act. I am H. Rutherford Turnbull, III, Secretary of the Association, and Chairman and Professor of Special Education and Professor of Law, The University of Kansas. I speak as a parent of a school-aged retarded son, lawyer specializing in the disabilities field, and special educator. I wish to file for the record an analysis of the policy of least restrictive education of handicapped children upon which ARC/U.S. relies in this testimony; the analysis was done at the University of Kansas. Today ARC/U.S. will briefly address only three issues raised by the proposed regulations. Later, it will comment at length on all of the proposed regulations.

Least Restrictive Educational Placement. The proposed regulations are wholly unacceptable on the issue of the least restrictive educational placement of handicapped children. They would delete present requirements that there be a continuum of services; that handicapped children be educated in the school they normally would attend and in schools as near as practicable to their parents' homes; that they be given maximum opportunity for nonacademic experiences; and that public agencies take positive action to include them in the total school environment. Moreover, the proposed regulations would allow public agencies to consider the effect on nonhandicapped children of placing handicapped children in programs with them.

From a policy perspective, the proposed regulations would be disasterous for handicapped children. They emphasize the stigma of the differentness of handicapped children by adding the stigma of separation. They undercut a major reason for federal involvement in education, which is to equalize opportunities among students. They disregard the constitutional imperative of the "least drastic" means. They ignore two of the rationales for the doctrine of least restrictive, which are that the doctrine secures the appropriate education of handicapped children and the right of handicapped children to associate with nonhandicapped children.

Integration yields equal treatment of both handicapped and nonhandicapped children because unequal treatment is illegal under present regulations and politically untenable. Integration also prevents the wholesale duplication of fiscal and personnel resources in the schools, a duplication that is nowadays economically infeasible. And placement of handicapped children in more normal settings is cost-effective because, as the Stanford Research Institute study shows (1981), the more separate and specialized the child's placement, the greater the cost of that placement.

All of the efficacy data are favorable to the present regulations. There has been no decrease in the academic achievement of handicapped children who have been mainstreamed. Their social and self-concepts have improved when adjustments have been made in school activities and there has been planned interaction of handicapped and nonhandicapped children. Nonhandicapped students tend toward greater acceptance of handicapped students when they go to school with them. Regular educators — those into whose programs handicapped children sometimes are placed — also show improved attitudes as a result of increased contact with handicapped children. And, in the long run, handicapped children have been more accepted into communities where they are educated.

To require, as the proposed regulations do, schools to take into account the likely disruption of the education of nonhandicapped students when considering the educational needs of handicapped children ignores the purpose of P.L. 94-142. That law properly focuses on the needs of the handicapped child. No data indicate that nonhandicapped children have been harmed by the presence of handicapped classmates; in fact, the opposite appears to be the case. Not only do nonhandicapped children learn valuable lessons about tolerance for differences, but also the presence of aides and resource teachers to work with the slower groups in the mainstream classroom frees the regular teacher to give more individual attention to nonhandicapped students. The law is child-centered, not system-centered. Under the proposed regulations, it becomes system-centered again. Indeed, if an appropriate education for a handicapped child is well planned, the child's schools and parents weigh the pros and cons of a placement with nonhandicapped children, from the point of view of the handicapped child. That is the proper focus — the handicapped child. The proposed regulations are simply mistaken in changing the focus of the law.

Eliminating the requirement for a continuum of placements would result in at least three shortcomings. First, it would make the regulations on the education of handicapped children inconsistent with other federal policy, such as community-based placements rather than institutionalization. Second, reducing the options for placement would preclude efficient delivery of those services the child needs. The presence of only one or two options would result in more "all or nothing" placements, in which handicapped children are placed either in a restrictive setting where there are costly services, such as residential facilities, that they do not need, or in regular programs without services they do need. The proposed regulations ignore the principle of individualization in education. Third, it removes the present mechanism for implementing the law. How could a school reasonably hope to comply with a law requiring it to place children in environments that are individually least restrictive when those environments are unavailable? Without the continuum requirements, the regulations would be meaningless and schools' problems in complying with the law would be increased, not alleviated.

Indeed, it would be logical to expect an increase in due process hearings as a result of the proposed change.

The deletion of the "nonacademic" and "total school environment" requirements from P.L. 94-142 regulations also would make them inconsistent with the regulations under Section 504 of the Rehabilitation Act, which require integration of handicapped children in those school activities. The Administration mistakenly views the 504 regulations as permissive.

The present regulations are consistent with the Constitution and widespread professional standards for educating handicapped children. To change them would make them incongruent with those standards, with the purposes and policies underlying the LRE principle, and with court decisions interpreting the "least drastic means" rule. It also would put two major constitutional and public-policy values in conflict with each other, namely the right to an appropriate education and the right under the first amendment to associate; the efficacy studies show these values are mutually consistent. ARC/U.S. rejects the proposed LRE regulations.

Disciplinary Provisions. ARC/U.S. also rejects the proposed "discipline" regulations. They assume that public agencies' present procedures discriminate against handicapped children. There is no adequate proof of this. Second, judicially developed guidelines on discipline are consistent with present law and suffice; new regulations are unnecessary.

We have, however, a more fundamental concern. We think the proposed regulations imply that it is permissible under federal law to expel a handicapped child from school. We believe that P.L. 94-142 does not permit expulsion; after all, expulsion is the most restrictive placement of all because it is totally outside the educational system. Such exclusion violates the "least restrictive" placement rule as well as Congressional intent and judicial interpretation.

ARC/U.S. also is concerned that the proposed regulations would be used to cover up placing handicapped children in more restrictive settings. We view the proposed discipline regulations as consistent with the proposed regulations relaxing the "least restrictive education" requirement; they are nothing short of an attempt to segregate handicapped children from nonhandicapped children, in violation of good educational practice, contrary to the results of efficacy studies, and in violation of constitutional rights.

Administration and Compliance. ARC/U.S. regards the proposed changes in administration and compliance (proposed Sections 300.11, .35, .70 through .75, .80 through .86, and .170-.173) as creating multiple risks for handicapped children and their parents and problems for state, local, and federal agencies. First, we think this form of deregulation is likely to permit and even encourage state and local agencies to backslide in their efforts to provide an appropriate education; the Administration is giving an explicit signal to public agencies that they may relax their commitment to handicapped children.

Second, we view the proposed regulations as diluting some of the important enforcement mechanisms now available to parents who wish to use the administrative process instead of due process safeguards. The Administration takes the position that administrative oversight by the federal government is undesirable; but someone must watch over the schools, and administrative supervision serves that function. Absent such oversight, parents will have no recourse except the due process hearing and civil lawsuits. Ironically, in the pursuit of less burdens for public agencies, the Administration may encourage greater use of due process, increasing the agencies' burdens and costs. Also, a serious retrenchment of federal oversight involves the allocation of federal funds without assurances the recipients will spend them for the purposes intended by Congress. That is hardly a defensible position for the federal government.

Third, reregulation is the essence of the proposed rules, not deregulation. State and local agencies would be obliged to spend several years and untold personnel hours and dollars gearing up to new regulations, just when they have achieved fairly widespread compliance with present regulations. They would have to retool all procedures and standards relating to monitoring, site and paper compliance, technical assistance, policy interpretations, and inservice and preservice training. The result inevitably will be dilution of effort from present (and long overdue) attention to quality education and redirection of fiscal resources from one compliance standard to a new one. The Administration might argue that retooling is permissive, not mandatory. But what assurances do we have that retooling would benefit handicapped children?

Fourth, state and local administrative retooling still could come to naught. State and local agencies still might find that they have not satisfied the "federal standard," whatever it might be in the view of this or another Administration. An essential component of law is that the laws must be known and knowable in order to be complied with and enforced. The Administration's deregulation violates this cardinal rule: the proposed federal standards are too imprecise to guide anyone.

Fifth, in an effort to reduce the cost of data collection, the proposed rules make it unlikely that current and accurate data will be available to the Executive and the Congress. Absent timely information, the Executive and the Congress must make policy and formulate budgets with less useful facts. This result defies all sound planning and budgetary principles.

Finally, the Administration seeks to convert many of the present regulations to nonbinding guidelines. Because a guideline is not binding on recipients of federal aid, the result will be a broad-scale gutting of the regulations and great potential for mischief in handicapped children's education.

In summary, ARC/U.S. takes this negative view of the deregulation of administrative and compliance regulations: they will make it impossible for handicapped children to get their due and for federal, state, and local agencies to know what to do.

Conclusion. This nation under P.L. 94-142 has come a long way toward assuring the civil rights of handicapped children and removing the stigma under which they have labored. As we have broken down the stigma, we have broadened the cultural and social parameters of nonhandicapped people and simultaneously advanced handicapped people's rights to be educated appropriately and associate with nonhandicapped people in their communities and in employment. Gutting the present regulations would be tantamount to declaring a policy against educating handicapped children appropriately, in favor of stigma and segregation, against constitutional rights of association, and in favor of discrimination in education.

We hope the Congress will encourage the Administration to withdraw the proposed regulations and resubmit regulations that protect the rights of children and parents and assist public agencies in meeting the mandates of P.L. 94-142. If the Congress fails in that effort and unacceptable rules are published in final form, we rely on the Congress to reject them.

Senator **Weicker**. Thank you very much. Let me just ask one question here. Paul, we have you there from the consortium, and we have got Georgia from the National Education Association, and Justine from the Association of Children with Learning Disabilities, and Bette from the Children's Defense Fund, and Rud from the Association for Retarded Citizens. Maybe there are even some other organizations out there in the audience that represent the constituency which is the subject matter of these hearings.

I want to know, did any of you people write and ask for a review and a change of the regulations? I am still trying to identify, in other words, where all of this came from. I was wondering if maybe any of you made this request of the administration.

Dr. **Hamilton**. Senator, I would like to clarify a meeting that I had with one of our attorneys with Ms. Tufts about that same point, only last spring, as a matter of fact. We wanted to know where these requests were coming from to deregulate the law, and Ms. Shirley Jones showed us a matrix of responses.

There were 5,000 letters from parents which were not counted at all because they did not specifically reiterate every provision of the existing regs which they wanted to keep. However, they did mention 20 to 25 groups, such as the national school boards and others, which had a vested interest in deregulating this program as the focus of the comments.

We certainly did not comment that we wanted any proposed changes and, in fact, sent a letter saying that they were doing just fine.

Mr. **Turnbull**. Senator Weicker, the Association for Retarded Citizens took the position last year and the year before that the proposed regulations which were then circulated in draft form were unacceptable. The association, however, has always taken the position that we would welcome some re-regulation that would improve the services to handicapped children, and we have made that position consistently clear to everybody concerned.

Senator **Weicker**. I would like to thank each one of you on the panel for your testimony. Before adjourning, I would also very much like to thank the two interpreters that have so ably done duty out here this morning.

I would like to also say that questions will be submitted to Secretary Bell and others for response in the record, and the record will remain open until September 10 for both questions and answers.

[The questions and responses referred to and additional material submitted for the record follow:]

THE SECRETARY OF EDUCATION
WASHINGTON, D.C. 20202

SEP 27 1982

The Honorable Lowell Weicker
Chairman
Subcommittee on the Handicapped
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510

Dear Senator Weicker:

Enclosed are my responses to the questions which were submitted to me by the Subcommittee. These responses provide the rationale for the provisions in the Notice of Proposed Rulemaking.

I want to emphasize to you by way of this letter, as I did in opening the first public hearing on these regulations in Washington, D.C., that the Department is fully and completely open for thoughtful comment on the regulations. The Department is not wedded to this specific wording of the proposed regulations. We are willing and determined to examine the specific concerns which are being expressed and to make approriate changes where necessary.

I am, by copy of this letter, distributing this response to other members of the subcommittee.

Sincerely,

T. H. BELL

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Enclosures

QUESTION: THE DEPARTMENT HAS SCHEDULED 9 REGIONAL HEARINGS TO PROVIDE AN OVERVIEW OF THE REGULATIONS AND TO SEEK PUBLIC COMMENT. I UNDERSTAND THAT AS OF YESTERDAY MORNING THREE OF THESE HEARINGS WERE FULLY SUBSCRIBED.

- WHAT ATTEMPT, IF ANY, IS BEING MADE TO ASSURE THAT A BROAD RANGE OF GROUPS INCLUDING PARENTS, ADVOCATES, SCHOOL PERSONNEL, RELATED SERVICE PROFESSIONALS AND OTHERS ARE ALLOWED AT EACH HEARING?
- ARE YOU WILLING TO SHARE WITH THIS SUBCOMMITTEE A QUANTITATIVE AND QUALITATIVE ANALYSIS OF THE WRITTEN AND ORAL COMMENTS YOU RECEIVE BEFORE YOU ISSUE FINAL REGULATIONS?

RESPONSE: Because of the tremendous public response to the notice of public hearings which appeared in the Federal Register on August 4, 1982, the Department is making arrangements to extend the previously scheduled times for the hearings. In Washington, D.C., hearings on September 8 and 9 were held simultaneously in two rooms rather than in one as originally planned. The Department's regional offices are either extending the hours for the other hearings, adding a third hearing day, or conducting hearings simultaneously in two rooms. In addition, hearing schedules have been published in the Federal Register for two additional locations: Philadelphia, Pennsylvania, and Kansas City, Kansas to be held on October 4 and 5 and October 5 and 6, respectively. We are hopeful that these steps will permit the expression of a full range of views at the hearings.

In addition, on August 4th, the Department held a briefing in Washington, D.C. for organizations and associations in the area which had expressed an interest in the proposed changes to the EHA-B regulations. The groups participating at this briefing represented parents, advocates, related services personnel, school personnel and others.

The Department will share its analysis of written and oral comments with the Subcommittee. The analysis will be completed prior to the development of final regulations.

QUESTION: IN THE PRESENT REGULATIONS AT SECTION 300.303, PUBLIC AGENCIES ARE REQUIRED TO INSURE THAT THE HEARING AIDS WORN BY DEAF AND HARD OF HEARING CHILDREN IN SCHOOL ARE FUNCTIONING PROPERLY. THE PROPOSED REGULATIONS DELETE THIS REQUIREMENT. ALTHOUGH THE REQUIREMENT IS NOT SPECIFICALLY MENTIONED IN THIS STATUTE, IT IS IMPORTANT FOR A FREE APPROPRIATE PUBLIC EDUCATION ESPECIALLY SINCE A STUDY DONE BY THE BUREAU OF EDUCATION FOR THE HANDICAPPED HAS REVEALED THAT UP TO ONE THIRD OF THE HEARING AIDS WERE MALFUNCTIONING. IN RECOGNITION OF THIS FACT, CONGRESS IN ITS 1978 APPROPRIATIONS REPORT (H. REP. NO. 95-381 P. 67) INDICATED THAT THE OFFICE OF EDUCATION WAS EXPECTED TO ENSURE THAT HEARING IMPAIRED SCHOOL CHILDREN ARE RECEIVING ADEQUATE PROFESSIONAL ASSESSMENT, FOLLOW-UP AND SERVICES.

- WHY, IN LIGHT OF THIS CLEAR CONGRESSIONAL INTENT, IS THE SECTION BEING DROPPED?

RESPONSE: As noted in the question, this requirement is not in the statute. In addition, speech pathologists and audiologists routinely check the functioning of hearing aids while performing their professional duties. However, the actual maintenance of the hearing aids themselves (i.e., repairs, replacement of parts) is a task that needs to be performed by trained technicians. When hearing-impaired children are placed in regular schools and classes, maintenance duties would fall most heavily on classroom teachers, who are not trained in these procedures.

QUESTION: HOW CAN YOU ENSURE THAT THE RIGHTS OF HANDICAPPED CHILDREN ARE FULLY PROTECTED IF DETERMINATION OF "REASONABLE LIMITATIONS" FOR RELATED SERVICES, AND "REASONABLE TIMELINES" FOR EVALUATION AND THE DEVELOPMENT OF THE IEP DEPENDS ON INTERPRETATION AND JUDGEMENT?

RESPONSE: The provisions allowing for reasonable limitations for related services and requiring reasonable timelines for evaluation and the development of the IEP are fully compatible with ensuring the protection of the rights of handicapped children.

In the case of related services, the proposed rule would permit the establishment of reasonable limitations on related services in the process of developing an IEP. The IEP meeting, of course, is the statutorily-provided forum for devising a child's educational program. Parents are full participants in this process, and are thus in a position to challenge any limitations on related services which they regard as unreasonable. Moreover, if a dispute on this issue could not be resolved at the IEP meeting, the statutory due process procedures would be available to ensure that the rights of the child were protected.

The "reasonable limitations" provisions would complement the new provision, at §300.39 of the proposed rules, which requires States to include in State plans a description of policies and procedures to ensure the provision of related services. The first provision should not adversely affect the availability of necessary services at the local level. Nor does it state a novel principle. Many public agencies already have guidelines for establishing the frequency and duration of speech pathology sessions, for example. Some agencies routinely arrange for such services as physical and occupational therapy to be provided at specific locations. Current Departmental guidance, in a comment following §300.13 of the existing regulations, contemplates that particular services might be provided by one of several qualified providers. Parents and agencies appear to be able to make the judgments contemplated by the proposed rule within the framework of the procedures established by the statute.

Regarding timelines for evaluation and the development of an IEP, the regulatory provisions in question will significantly improve the Department's ability to ensure that the rights of handicapped children are protected. The interval between a child's identification and the child's evaluation is not addressed in current regulations. Proposed §300.18(b), which requires reasonable timelines adopted by the State to ensure a prompt evaluation, reflects the Department's concern that States take steps to prevent any undue delay in evaluations. Similarly, proposed §300.20(b) requires reasonable timelines adopted by the State to ensure the prompt establishment of an IEP.

Under the proposed rules, a State's timelines for evaluation and the establishment of an IEP would be required to be included in its State plan. They would thus be subject to public scrutiny under §612(7) of the statute and §300.11(b) of the proposed rules. In addition, these timelines would be subject to review by this Department, as provided in proposed §300.12. This review process is more than adequate to ensure the protection of the rights of handicapped children as those rights might be affected by a State's adoption of timelines. Moreover, because timelines would take account of the individual circumstances in each State, they are likely to be more effective than a single set of timelines established at the Federal level.

QUESTION: IF THE PART B PROGRAM AND ITS CURRENT REGULATIONS ARE "BURDENSOME" AND "PRESCRIPTIVE" AS YOU CLAIM, WHY IS IT THAT ONLY ONE STATE, NEW MEXICO, HAS NOT APPLIED FOR PART B FUNDING ESPECIALLY SINCE THE FEDERAL GOVERNMENT ONLY PAYS ABOUT 10% OF THE BILL FOR SPECIAL EDUCATION SERVICES?

RESPONSE: New Mexico declined to participate in the Part B program because of the regulatory requirements. Other States have indicated that the promise of substantial Federal assistance outweighed their objections to the current regulations. The preamble to the current regulations published in August, 1977, states the expectation that revisions to the regulations would be necessary once the Nation's school systems gained more experience in providing educational programs to handicapped children (42 F.R. 42475). Since 1977, State and local educational agencies have made much progress in providing appropriate programs and services in spite of some Federal regulatory requirements that school officials have consistently considered excessive, confusing, or impediments to efficient use of their resources. The proposed regulations reduce some of that burden, while preserving all the statutory rights of handicapped children and their parents.

QUESTION: HOW DO THESE REGULATORY CHANGES GUARANTEE LESS FISCAL AND ADMINISTRATIVE BURDENS WHEN THERE IS THE LIKELIHOOD FOR INCREASED LITIGATION?

RESPONSE: The elimination of numerous administrative and paperwork requirements, such as those imposed by the State plan and local application provisions, will reduce the substantial burden on public agencies. Where the Department felt that regulatory language would help to clarify the responsibilities of public agencies under the Act, the proposed regulations include such language. In general, the Department believes that any increase in litigation that may result from the absence of specific regulatory provisions will be outweighed by the substantial benefits of removing regulatory detail that detracts from the process envisioned by the statute, and will enhance the provision of services to children.

QUESTION: BY NOT INCLUDING SPECIFIC REGULATIONS PERTAINING TO ISSUES SUCH AS MANDATORY HEARINGS BEFORE EXPULSION OR SUSPENSION OF HANDICAPPED CHILDREN AND THE PROVISION OF EXTENDED YEAR PROGRAMS ARE YOU NOT ALLOWING STATE POLICY TO OPERATE AT A RISK (AND BURDEN) OF LITIGATION IF STATE POLICY OR LOCAL EDUCATIONAL AGENCY ACTION ARE INCONSISTENT WITH JUDICIAL PRECEDENTS?

RESPONSE: The Department has not sought in the proposed regulations to answer every question that might arise in carrying out the EHA-B program, or to address every matter that has been the subject of litigation. There is considerable room for agency judgment and discretion in carrying out the program, and the Department has sought to free agencies to exercise that judgment and discretion where the statute appears to contemplate it. However, the Department anticipates that agencies will be aware and take account of applicable judicial precedent as a constraint on their discharging their responsibilities under this statute just as they do in carrying out their myriad other responsibilities.

QUESTION: UNDER FREE APPROPRIATE PUBLIC EDUCATION, SECTIONS 300.110 and 300.112, WHEN A CHILD IS PLACED IN A PRIVATE RESIDENTIAL PROGRAM BY A PUBLIC AGENCY, THE PARENTS MAY NOT BE CHARGED FOR THE COSTS OF SPECIAL EDUCATION AND RELATED SERVICES, AND FOR ROOM AND BOARD. HOWEVER, A GUIDELINE ATTACHED TO THIS SECTION ADDS THAT NOTHING IN THE REGULATIONS WOULD PREVENT A PUBLIC AGENCY FROM SEEKING REIMBURSEMENT FROM PARENTS OF THE CHILD FOR OTHER "RESIDENTIAL COSTS."

- WHAT OTHER RESIDENTIAL COSTS MIGHT THESE INCLUDE?
- MIGHT THESE OTHER RESIDENTIAL COSTS INCLUDE THE PROVISION OF PRIMARY KINDS OF CUSTODIAL SERVICES TO THE CHILD--SUCH AS ASSISTANCE IN FEEDING, TOILETING, DRESSING, ETC.? THOSE NON-MEDICAL SERVICES WHICH ARE VITAL TO RETAINING A CHILD IN THE PROGRAM?
- THE DEPARTMENT'S PROPOSED REGULATIONS DEFINE FREE APPROPRIATE PUBLIC EDUCATION AS "SPECIAL EDUCATION AND RELATED SERVICES WHICH ARE PROVIDED AT PUBLIC EXPENSE . . . WITHOUT CHARGE." ARE YOU AWARE THAT THE DEPARTMENT OF EDUCATION'S EXISTNG SECTION 504 REGULATIONS (SECTION 104.33 (C) (3)) STATES SPECIFICALLY THAT PARENTS MAY NOT BE CHARGED FOR NON-MEDICAL SERVICES? HOW DO YOU EXPECT THAT THE PROBLEM WITH TWO CONFLICTING FEDERAL REGULATIONS WILL BE RESOLVED BY THE STATES?

RESPONSE: A guideline which follows proposed §300.112 indicates that nothing in the proposed regulations prevents a public agency from establishing procedures to obtain reimbursement from parents or others, as appropriate, for residential costs other than (1) the costs for special education and related services provided in accordance with the child's IEP, and (2) room and board. The clarification of this cost requirement is generally consistent with the deregulation effort in that the statute does not contain a requirement that public agencies bear all the noneducational costs of placing a child in a residential facility.

As is indicated by the guideline after proposed §300.112, the nature of any costs and the manner of obtaining reimbursement from parents are appropriate subjects for discussion at an IEP or a subsequent meeting and, therefore, may be determined on an individual basis.

The Department is currently reviewing its regulations under Section 504. The review of the EHA-B and Section 504 regulations, although entirely separate processes, will continue to be coordinated in order to ensure that any revisions adopted in final regulations are harmonized to the extent the two statutes permit. Until this occurs, agencies will continue to be obligated to comply with regulations in effect.

QUESTION: ONE OF THE IMPORTANT PROCEDURAL SAFEGUARDS IN THE ACT IS THE REQUIREMENT THAT A STATE, LOCAL OR INTERMEDIATE EDUCATION AGENCY HAVE PROCEDURES DESIGNED TO ASSURE THAT THE NOTICE GIVEN TO PARENTS OF A HANDICAPPED CHILD "FULLY INFORM THE PARENTS OR GUARDIAN." 20 U.S.C. 1415 (b)(1)(d). THE PRESENT REGULATIONS UNDER THIS SECTION CONTAIN DETAILED REQUIREMENTS FOR THE NOTICE IN ORDER TO MEET THIS REQUIREMENT. ONE OF THESE REQUIREMENTS IS A DESCRIPTION OF EVALUATION PROCEDURES (§300.505). THE PROPOSED REGULATIONS (§300.146) DO NOT SPECIFICALLY REQUIRE A DESCRIPTION OF THE EVALUATION PROCEDURES.

- HOW IS A PARENT OF A HANDICAPPED CHILD ABLE TO BE FULLY INFORMED IF THE EVALUATION PROCEDURES USED ON THE CHILD ARE NOT DESCRIBED?

RESPONSE: The proposed regulations do not affect a parent's right to be fully informed. Under 20 U.S.C. 1415(a), parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education to their child. Such procedural safeguards include the opportunity for parents to examine all relevant records with respect to the identification, evaluation, and educational placement of their child. Also, 20 U.S.C. 1415(b)(1)(D) requires that the notice to parents inform them of all of the procedures available pursuant to this section of the Act, i.e., procedural safeguards. The parents' right of access to the evaluation procedures and results used to make educational decisions is reiterated in the proposed regulations.

Regarding evaluation procedures, §300.146(a)(2) of the proposed regulations requires that written prior notice to the parent include "[a]n explanation of the action proposed or refused by the agency, and the basis for the agency's decision."

Section 300.146(a)(3) of the proposed regulations states that the content of the written prior notice must include any information deemed relevant by the public agency to assist the parent in understanding the agency's proposal or refusal. Where the agency proposes to change a child's placement on the basis of an evaluation, these regulatory provisions would require that the action be explained in the notice. Where the agency proposes to evaluate a child, the regulations would require notice of the reasons for its proposal and any information the agency believed relevant to ensure that the notice was meaningful. Practitioners have noted that, in many cases, decisions about the evaluation procedures and instruments to be used with a child are not made until the evaluation begins. The current regulations presume advance decisions on these matters, thus leading to the use of standard test batteries and approaches which may result in over- or under-assessment of a child's specific educational needs.

QUESTION: THE ACT REQUIRES THAT ANY PARTY TO A HEARING SHALL BE ACCORDED THE RIGHT TO PRESENT EVIDENCE AND CONFRONT, CROSS-EXAMINE AND COMPEL THE ATTENDANCE OF WITNESSES. 20 U.S.C. §1415 (d). THE PRESENT REGULATIONS (§300.508) ALSO REQUIRE THAT ANY PARTY TO THE HEARING HAS A RIGHT TO "PROHIBIT THE INTRODUCTION OF ANY EVIDENCE AT THE HEARING THAT HAS NOT BEEN DISCLOSED TO THAT PARTY AT LEAST FIVE DAYS BEFORE THE HEARING."

- DESPITE THE IMPORTANCE OF THIS RIGHT TO EXAMINE EVIDENCE PRIOR TO A HEARING, THE PROPOSED REGULATIONS AT 300.149 DELETE THIS RIGHT. HOW, THEN, IS THE STATUTORY RIGHT TO CONFRONT, CROSS-EXAMINE AND COMPEL THE TESTIMONY OF WITNESSES TO BE MADE MEANINGFUL?

RESPONSE: The statutory rights of a party to a due process hearing to confront, cross-examine, and compel the attendance of witnesses are reiterated in §300.149(a)(2) of the proposed regulations. Also set out in that section of the regulations are the other hearing rights found in 20 U.S.C. 1415(d).

As explained in the guideline following §300.149, States are free to specify evidentiary and other technical procedural requirements that relate to impartial hearings and reviews. The statute, at 20 U.S.C. 1415(b)(1), expressly provides that the procedures required by that section include, but are not limited to, the rights set out therein. Thus, States may adopt such procedures as they believe to be appropriate to govern the conduct of EHA-B due process proceedings, so long as those procedures are not inconsistent with Federal law. States may wish to continue the policy, reflected in current §300.508(a)(3), of authorizing a party to bar the introduction of evidence that was not disclosed to that party at least five days before the hearing. Alternatively, they may wish to allow impartial hearing officers to adopt less rigid, or different, means of preventing surprise and ensuring basic fairness at the proceedings. Since the statute does not contain the five-day rule, the Department believes it preferable to leave the regulation of this matter, as well as other procedural matters relating to hearings and reviews, to the agencies which administer them.

QUESTION: UNDER THE PROPOSED REGULATIONS, PUBLIC AGENCIES ARE STILL REQUIRED TO TAKE STEPS TO ENSURE PARENTAL PARTICIPATION BUT RECORDS ARE NOT REQUIRED TO BE KEPT AND NO PROVISION IS MADE FOR THE USE OF INDIVIDUAL OR CONFERENCE TELEPHONE CALLS (§300.125). THE KEEPING OF RECORDS HELPS TO ENSURE THAT PUBLIC AGENCIES ARE DOING ALL THAT THEY CAN TO PROVIDE FOR PARENTAL PARTICIPATION.

- WHY IS THIS REQUIREMENT REMOVED?
- AND WHY, IN THE LIGHT OF STRONG CONGRESSIONAL COMMITMENT TO THE PARTICIPATION OF PARENTS, IS THE REQUIREMENT FOR USING INDIVIDUAL OR CONFERENCE TELEPHONE CALLS DELETED?

RESPONSE: The statute does not contain provisions for the specific procedures State and local educational agencies should use in order to obtain parental participation in the IEP process. When the existing regulations were drafted in 1977, there was a critical need to provide guidance to States for implementation of the Act. An example of this kind of provision is the one which requires agencies to document efforts to secure parental attendance at the IEP meeting.

State and local educational agencies have now had five years of experience in implementing the Act and regulations. Many of the concerns in 1977 are no longer issues, and some of the provisions of the existing regulations (such as the illustrations of how agencies might ensure parental participation where neither parent could attend the IEP meeting) have proved to be either unnecessary or less imperative since States have put in place routine, systematic procedures for involving parents. However, proposed §300.125 continues to impose responsibilities on agencies to ensure that parents attend IEP meetings or are given the opportunity to participate in other ways.

QUESTION: A THEME RUNNING THROUGHOUT THE ACT AND ITS LEGISLATIVE HISTORY IS THE IMPORTANCE OF PARENTAL INVOLVEMENT IN THE EDUCATION OF HANDICAPPED CHILDREN. IN THE PRESENT REGULATIONS (§300.504) WRITTEN NOTICE MUST BE GIVEN TO THE PARENTS OF A HANDICAPPED CHILD BEFORE A PUBLIC AGENCY PROPOSES TO INITIATE OR CHANGE THE CHILD'S IDENTIFICATION, EVALUATION OR EDUCATIONAL PLACEMENT. IN ADDITION, THIS REGULATION REQUIRES THAT PARENTAL CONSENT BE OBTAINED BEFORE CONDUCTING A PREPLACEMENT EVALUATION AND INITIAL PLACEMENT OF A HANDICAPPED CHILD IN A PROGRAM PROVIDING SPECIAL EDUCATION AND RELATED SERVICES.

- IN THE PROPOSED REGULATION (§300.145), WRITTEN NOTICE IS STILL REQUIRED BUT THE PROVISION RELATING TO PARENTAL CONSENT IS DELETED. WHY IS THIS IMPORTANT REQUIREMENT DELETED?

RESPONSE: The statute does not contain any express requirement for parental consent prior to initial evaluation or initial placement in special education. Under Section 439(b) of the General Education Provisions Act (GEPA) commonly referred to as the Hatch Amendment, a student need not submit to psychiatric or psychological testing without prior parental consent if that testing is intended to reveal information that could be embarrassing. There is no need to reiterate a consent requirement relating to this type of testing in the proposed regulations. In addition, most states (84%) currently require parental consent prior to evaluation through State law or regulations. Statutory prior notice requirements remain in place, as do parental rights to a due process hearing in case of disagreement on the evaluation or placement of a child.

With regard to parental consent to an initial placement in special education, the "pendency" provision of the statute (20 U.S.C. 1415(e)(3)) operates as a consent requirement of sorts. If a parent objects to an agency's proposed initial placement and initiates a due process hearing, this provision requires that the child remain in the then current educational placement during the pendency of the proceedings in both the administrative and the judicial forums. See proposed §300.153.

QUESTION: HOW CAN YOU ENSURE THAT THE RIGHTS OF PARENTS OF HANDICAPPED CHILDREN ARE FULLY PROTECTED AS INTENDED BY CONGRESS IF

- PARENTAL CONSENT IS NO LONGER REQUIRED PRIOR TO AN INITIAL EVALUATION OR PRIOR TO AN INITIAL PLACEMENT INTO AN EDUCATIONAL PROGRAM?
- IT IS NO LONGER NECESSARY TO DOCUMENT ATTEMPTS TO INVOLVE PARENTS IN THE I.E.P. MEETING?
- IT IS NO LONGER NECESSARY TO INFORM PARENTS OF LOW COST OR FREE LEGAL SERVICES FOR DUE PROCESS HEARINGS?
- PARENTS CAN NO LONGER OPEN DUE PROCESS HEARINGS TO THE PUBLIC?
- NEW EVIDENCE UNFAMILIAR TO THE PARENTS CAN BE INTRODUCED INTO THE DUE PROCESS HEARING?
- CAN YOU TELL THIS SUBCOMMITTEE THAT THESE CHANGES WILL NOT RESULT IN LESS INFORMED, LESS INVOLVED PARENTS?

RESPONSE:

- Parental consent

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- Documenting attempts to involve parents

The elimination of mandated recordkeeping procedures for documenting attempts to involve parents will not affect the rights of parents. Parental participation remains a chief component of the proposed regulations and, as a result, all reasonable attempts to ensure parental participation must be undertaken. What has been deleted is the requirement for detailed paperwork associated with documenting the process of obtaining parental participation. The principle of parental participation in a handicapped child's educational program remains in place.

- Informing parents of free or low cost legal services

The requirement for informing parents of free or low-cost legal services is not found in the statute. Parents continue to have the right to legal counsel, but public agencies have no duty to gather the information or to inform parents of where free or low cost legal services may be obtained.

- Open due process hearings

The proposed change, to remain silent on whether due process hearings must be open to the public, allows decisions on this question, like other questions concerning the conduct of hearings, to be made in accordance with any State law governing this matter. The Federal statute does not require hearings to be open to the public.

- Disclosure

Similarly, the provision concerning evidence not disclosed to the other party to a hearing at least five days prior to its introduction has been deleted. The removal of this provision does not, however, mean that a hearing officer cannot require prior disclosure of evidence to be presented at a hearing if this is permitted under State law.

As explained in the guideline following §300.149, States are free to specify evidentiary and other technical procedural requirements that relate to impartial hearings and reviews. The statute, at 20 U.S.C. 1415(b)(1), expressly provides that the procedures required by that section include, but are not limited to, the rights set out therein. Thus, States may adopt such procedures as they believe to be appropriate to govern the conduct of EHA-B due process proceedings, so long as those procedures are not inconsistent with Federal law. States may wish to continue the policy, reflected in current §300.508(a)(3), of authorizing a party to bar the introduction of evidence that was not disclosed to that party at least five days before the hearing. Alternatively, they may wish to allow impartial hearing officers to adopt less rigid, or different, means of preventing surprise and ensuring basic fairness at the proceedings. Since the statute does not contain the five-day rule, the Department believes it preferable to leave the regulation of this matter, as well as other procedural matters relating to hearings and reviews, to the agencies which administer them.

QUESTION: THE STATUTE SPECIFICALLY PROVIDES FOR THE EDUCATION OF HANDICAPPED CHILDREN IN THE REGULAR EDUCATIONAL ENVIRONMENT TO THE MAXIMUM EXTENT APPROPRIATE. 20 U.S.C. §1412(5)(B), 20 U.S.C. §1414(a)(C)(iv). THE PRESENT AND PROPOSED REGULATIONS BOTH MAINTAIN THIS REQUIREMENT. (PRESENT REGULATIONS §300.550, PROPOSED REGULATIONS §300.160). HOWEVER, THE PROPOSED REGULATIONS PROVIDE THAT IN DETERMINING WHEN A HANDICAPPED CHILD'S PLACEMENT IN A REGULAR CLASSROOM IS INAPPROPRIATE THE PUBLIC AGENCY MAY CONSIDER "SUBSTANTIAL AND CLEARLY ASCERTAINABLE DISRUPTION OF THE EDUCATIONAL SERVICES PROVIDED TO OTHER CHILDREN IN THE SAME CLASSES". (PROPOSED REGULATIONS, §300.161.)

- WHY IS THIS SPECIAL PROVISION NECESSARY WHEN THE STATUTE IS CLEAR THAT A HANDICAPPED CHILD BE PLACED IN A REGULAR CLASS "TO THE MAXIMUM EXTENT APPROPRIATE AND ONLY WHEN THE NATURE OR SEVERITY OF THE HANDICAP IS SUCH THAT EDUCATION IN A REGULAR CLASS CANNOT BE ACHIEVED SATISFACTORILY"?
- ARE YOU NOT OPENING A WAY FOR EXCLUSION OF HANDICAPPED CHILDREN IN REGULAR CLASSES ON SUBJECTIVE JUDGEMENTS OF WHAT CONSTITUTES A DISRUPTION?
- UNDER THE PROPOSED REGULATIONS IS IT CONCEIVABLE THAT A TEACHER MAY DETERMINE A CEREBRAL PALSIED CHILD IS DISRUPTIVE BECAUSE HE/SHE USES A MOTORIZED WHEELCHAIR AND COMMUNICATES WITH A BOARD?

RESPONSE: Proposed §300.161(c)(2) allows an agency, in determining whether a handicapped child should be placed in regular classes, to consider a substantial and clearly ascertainable disruption of educational services to other children in the same classes. The guideline following that paragraph states:

> Guideline: Paragraph (c)(2) is a narrow provision to be applied only in very limited circumstances. Placement of a handicapped child outside a regular class is not warranted, for example, where any adverse effect on other children is speculative in nature, or relates only to isolated incidents of disruption. Rather, an adverse effect on other children is grounds for such a placement only where the handicapped child exhibits specific behaviors that would clearly and substantially disrupt their educational services.

The Department thinks these provisions, read together, are useful in clarifying commentary on the least restrictive environment found in current regulations so as to prevent the improper exclusion of handicapped children from regular classes. A comment following current §300.513 quotes with approval the Appendix to the Department's regulations under Section 504 of the Rehabilitation Act of 1973: "Where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs" (emphasis added). Current regulations do not elaborate on how a determination that the education of other students was "significantly impaired" should be made.

By setting forth a strict regulatory standard for when the disruption of other children's education may be considered, and by describing the limited circumstances intended to be encompassed by the standard, the Department has provided a clarification that will benefit both handicapped children and educational agencies. This clarification is fully in accord with expressions of Congress's intent in enacting the least restrictive environment, or mainstreaming, provisions, and with judicial precedent.

The legislative history of the Act indicates that the mainstreaming requirement grew out of the Congress's concern about the widespread exclusion of handicapped children from the regular classroom. Typical of this concern was a statement by Senator Stafford, a co-sponsor of the bill that was enacted as P.L. 94-142:

> "For far too long handicapped children have been denied access to the regular school system because of an inability to climb the steps to the schoolhouse door, and not for any other reason. This has led to segregated classes for those children with physical handicaps."

121 CONG. REC. 19484 (1975).

In the same vein, Congressman Gude, during the House debate on the bill, stated that "[t]here is no question that previous emphasis on institutionalization were [sic] not only dehumanizing, but neglected the basic precept that...[handicapped] persons have the same rights as other human beings." 121 CONG. REC. 37027 (1975).

The Act does not elaborate on the least restrictive environment provision set out above by, for example, defining the phrases "to the maximum extent appropriate" or "education in regular classes...cannot be achieved satisfactorily." Nor does the Act's legislative history or available judicial precedent provide much guidance on what factors a public agency must, should, or may consider when deciding whether to place a handicapped child in, or to remove the child from, a regular classroom.

SEP intends to vigorously monitor this aspect of the proposed regulations to ensure that: (a) disciplinary procedures are not indiscriminately applied to handicapped students and, (b) that the nature of the handicap is considered as a plausible contributing factor prior to disciplinary action. In addition, OCR also monitors LEA suspension and expulsion practices concerning handicapped students. As a result of these combined monitoring efforts, it is improbable that disciplinary procedures will result from a behavior that is caused by a child's handicapping condition.

There are no judicial decisions which have comprehensively addressed the application of the mainstreaming requirement as it relates to the effect of a handicapped child's placement on the education of other children. However, in cases involving sanctions for disruptive behavior of handicapped children, courts have acknowledged the relevance of the needs of other children.

In Stuart v. Nappi, 443 F. Supp. 1235 (D. Conn. 1978), the court held that a school cannot use an expulsion proceeding to change the educational placement of a handicapped child, but noted that "[h]andicapped children...are [not]...entitled to participate in programs when their behavior impairs the education of other children in the program." 443 F. Supp. at 1243. Another district court, in holding that a handicapped child who had been suspended from school was not entitled to a preliminary injunction against the suspension, noted that the statutory obligation to place handicapped children in regular classrooms must be balanced against the need to maintain order in the educational environment. Stanley v. School Administrative Unit No. 40 for Milford, 3 EHLR 552:390, 396 (D.N.H. 1980). See also, Blue v. New Haven Board of Education, 3 EHLR 552:401, 406 (D.Conn. 1981).

In summary, the proposed regulations provide useful clarification of a subject treated in cursory fashion in current regulations, and they are fully consistent with the Congress's intent and case law. The Department's intention in making the proposals at issue is not to "[open] the way for exclusion of handicapped children" from regular classes. On the contrary, the proposed regulations would limit placements outside regular classes that were based on assertions of disruption. The Department does not believe a cerebral palsied child's use of a motorized wheelchair or a communication board in any circumstances of which we are aware warrants placement outside the regular class under either the current or the proposed regulations. The Department welcomes suggestions on how the provisions of the proposed regulations might be modified to prevent their misapplication.

QUESTION: HOW CAN YOU ENSURE THAT THE RIGHTS OF HANDICAPPED CHILDREN ARE FULLY PROTECTED, THAT THE GOAL OF PROVIDING FULL EDUCATIONAL OPPORTUNITIES TO ALL HANDICAPPED CHILDREN IN THE LEAST RESTRICTIVE ENVIRONMENT WILL BE FULFILLED IF

- IT IS NO LONGER REQUIRED THAT HANDICAPPED CHILDREN PARTICIPATE WITH NONHANDICAPPED CHILDREN IN NONACADEMIC SETTINGS SUCH AS MEALS AND RECESS TO THE EXTENT APPROPRIATE?
- IT IS NO LONGER REQUIRED THAT THE NONACADEMIC AND EXTRACURRICULAR SERVICES AVAILABLE TO THE NONHANDICAPPED BE AVAILABLE TO THE HANDICAPPED CHILDREN?

RESPONSE: Current §300.553, Nonacademic settings, is taken from a requirement in the Department's regulations under Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 regulations includes the following statement: "[A new paragraph] specifies that handicapped children must be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children."

The applicable EHA-B statutory provision relating to the least restrictive environment requires that a handicapped child be educated with nonhandicapped children to the maximum extent appropriate, and that such a child not be removed from the regular educational environment except in limited, specified circumstances. This provision is reiterated in proposed §§300.160 and 300.161. The Department does not construe these provisions as applicable only in strictly academic settings.

As regards the availability of nonacademic and extra-curricular services, the obligations of public agencies under Section 504 and other laws are unaffected by the proposed rules. See proposed §300.113. However, the EHA does not impose an independent obligation to provide these services to a handicapped child where they are not a part of the child's program of special education and related services.

QUESTION: HOW CAN YOU ENSURE THAT THE RIGHTS OF HANDICAPPED CHILDREN ARE FULLY PROTECTED, THAT THE GOAL OF PROVIDING FULL EDUCATIONAL OPPORTUNITIES TO ALL HANDICAPPED CHILDREN IN THE LEAST RESTRICTIVE ENVIRONMENT WILL BE FULFILLED IF

- IT IS NO LONGER REQUIRED THAT A CONTINUUM OF ALTERNATE EDUCATIONAL PLACEMENTS BE AVAILABLE FOR HANDICAPPED CHILDREN?

RESPONSE: The Department has deleted the requirement that each school district maintain a "continuum of alternative placements" (current §300.551) because this provision is not included in the statute and may have worked to encourage placement in a more restrictive environment simply because the more restrictive alternatives were in place. The Department believes that under the proposed regulations agencies will continue to place students in a variety of alternative placements, but that the placement decisions will be more individualized.

QUESTION: HOW CAN YOU ENSURE THAT THE RIGHTS OF HANDICAPPED CHILDREN ARE FULLY PROTECTED, THAT SPECIAL EDUCATION AND RELATED SERVICES ARE DESIGNED TO MEET THEIR UNIQUE NEEDS AS DETERMINED BY AN EVALUATION AND THE DEVELOPMENT OF AN I.E.P. (INDIVIDUALIZED EDUCATIONAL PLAN) IF

- A MULTIDISCIPLINARY APPROACH IS TO BE USED FOR ONLY CERTAIN CHILDREN?
- IT IS NO LONGER NECESSARY TO VALIDATE TESTS FOR THE SPECIFIC PURPOSE FOR WHICH THEY ARE USED?
- IT IS NO LONGER NECESSARY TO ASSESS IN OTHER THAN AREAS OF SPECIFIC NEED?
- IT IS NO LONGER REQUIRED TO DETAIL HOW EVALUATION DATA WILL BE INTERPRETED?
- IT IS NO LONGER REQUIRED THAT REEVALUATION OCCUR EVERY THREE YEARS?
- IT IS NO LONGER NECESSARY TO DEVELOP AN I.E.P. 30 DAYS AFTER EVALUATION?
- IT IS NO LONGER NECESSARY TO INCLUDE EVALUATION PERSONNEL IN THE I.E.P. DEVELOPMENT?

RESPONSE: Overall, the changes in evaluation procedures for handicapped children should improve the diagnostic process and allow educational agencies to use their evaluation personnel more efficiently.

- Multidisciplinary evaluations.

The proposed regulations continue to require multidisciplinary evaluations for all children suspected of having severe, multiple, or complex disorders, including a specific learning disability. §300.158(g)(2). Moreover, proposed §300.158(g)(1) requires that each child's evaluation be sufficiently comprehensive to diagnose and appraise the child's suspected impairment. As suggested in a comment in the current regulations, in many cases a full array of professionals is not needed to diagnose a child's impairment. For example, most speech-impaired children can be appropriately assessed by a speech-language pathologist, who would refer the child to other specialists for further evaluation, as required.

- Test validation.

The proposed regulations require that tests and other materials used for placement must be "properly and profesionally evaluated for the specific purpose for which they are used". Proposed §300.158(d). This standard is taken verbatim from the Senate Report cited after that section. These regulations thus require professional judgment to determine the applicability of a test producer's validation to individual handicapped children.

* Assessment of areas of specific need.

The requirement in proposed §300.158(e) that tests and other evaluation procedures include assessment of specific areas of educational need continues the similar requirement in §300.532(b). Again, the language of the proposed provision is taken from the cited Senate Report. The proposed provision does not limit the evaluation to areas of specific educational need. Instead, it emphasizes the necessity of focusing assessment on those areas.

* Interpretation of evaluation data.

The proposed regulations do not affect a parent's right to be fully informed. Under 20 U.S.C. 1415(a), parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education to their child. Such procedural safeguards include the opportunity for parents to examine all relevant records with respect to the identification, evaluation, and educational placement of their child. Also, 20 U.S.C. 1415(b)(1)(D) requires that the notice to parents inform them of all of the procedures available pursuant to this section of the Act, i.e., procedural safeguards. The parents' right of access to the evaluation procedures and results used to make educational decisions is reiterated in the proposed regulations.

Regarding evaluation procedures, §300.146(a)(2) of the proposed regulations requires that written prior notice to the parent include "[a]n explanation of the action proposed or refused by the agency, and the basis for the agency's decision."

Section 300.146(a)(3) of the proposed regulations states that the content of the written prior notice must include any information deemed relevant by the public agency to assist the parent in understanding the agency's proposal or refusal. Where the agency proposes an action regarding a child's evaluation, these regulatory provision would require that the action be explained in the notice. Where the agency proposed to evaluate a child, the regulations would require notice of the reasons for its proposal and any information the agency believed relevant to ensure that the notice was meaningful. Practitioners have noted that, in many cases, decisions about the evaluation procedures and instruments to be used with a child are not made until the evaluation begins. The current regulations presume advance decisions on these matters, thus leading to the use of standard test batteries and approaches which may result in over-or under-assessment of a child's specific educational needs.

- Reevaluation requirement.

Deleting the requirement that prescribes a three-year interval for a reevaluation does not remove the requirement for periodic reevaluation. Section 300.141 of the proposed regulations requires SEAs to establish maximum intervals for reevaluations, with the stipulation that reevaluations must be provided more frequently if necessary to meet a child's educational needs. Program experience supports the requirement for periodic reevaluation to ensure that the unique and changing needs of handicapped children are known and understood. The National Academy of Sciences recently recommended annual reassessments of children placed in classes for educable mentally retarded students. The Secretary believes, however, that a nationwide, Federally-set interval for the reevaluation of all handicapped children is inappropriate.

- IEP development.

The proposed regulations no longer require the development of an individualized education program (IEP) within 30 days after evaluation. However, State plan requirements are modified to require States to set reasonable timelines for conducting IEP meetings after children are evaluated. The State-determined timelines will ensure that children's IEPs are developed without unreasonable delay. The timelines are part of the State plan and are, therefore, subject to public comment and Departmental review and approval.

- Attendance of evaluation personnel at IEP meetings.

Legislative history of the EHA contains evidence that the IEP meeting was intended to be a small meeting between parents and school personnel. See Congressional Record, June 18, 1975. (Remarks of Senator Randolph). Since implementation of the current regulations, there has been concern about the size of IEP meetings. Studies have documented IEP meetings with up to 15 participants, and recent data reported by the National Association of State Directors of Special Education (NASDSE) suggests an increase in the average size of meetings. Meetings involving large numbers of school personnel sometimes inhibit active participation in such meetings by parents, according to studies supported by SEP. The proposed regulations can be helpful to parents and school districts by reversing the trend towards larger meetings through a requirement that only those persons listed in the Act attend the meeting. However, §300.124(e) of the proposed regulations provides that "other individuals at the discretion of a parent or the agency" may attend the IEP meeting. Thus, evaluation personnel could be present at the IEP meeting. A guideline following this proposed section suggests that the participation of evaluation personnel may be advisable in the case of a child evaluated for the first time, or where the child has been reevaluated.

QUESTION: HOW CAN YOU TELL ME THAT THERE IS NOT A GREATER CHANCE FOR MISCLASSIFYING HANDICAPPED CHILDREN WHICH WOULD RESULT IN AN INAPPROPRIATE PLACEMENT AND THIS TRANSLATES INTO AN INADEQUATE EDUCATION WHICH WOULD SIGNIFICANTLY EFFECT THE LIFE OF A DISABLED PERSON?

RESPONSE: The proposed regulations provide protections against misclassification of children by including provisions in §300.158 which stress an individualized approach to children's evaluations. The revised provisions are supported by the legislative history, which directs the promulgation of regulations to prevent erroneous classification of children as handicapped. (See Senate Report No. 94-168, p.29 (1975.)) Among other proposed requirements, agencies must ensure that all relevant information with regard to the functional abilities of a child is utilized in the placement determination, and that evaluations are sufficiently comprehensive to diagnose and appraise the child's suspected impairment. The IEP and due process requirements also protect against misclassification by providing for parental involvement in the identification, evaluation, and placement of handicapped children.

The proposed regulations add a provision that tests administered to a bilingual child must accurately reflect the child's ability in the area tested, rather than the child's limited English skills. This requirement clarifies the statutory standard that testing and evaluation materials be selected and administered so as not to be racially or culturally discriminatory.

QUESTION: THROUGHOUT THE PROPOSED REGULATIONS, THE DEPARTMENT OF EDUCATION HAS ELIMINATED REQUIREMENTS FOR THE INCLUSION OF CERTAIN DATA IN STATE PLANS AND LOCAL APPLICATIONS. FOR EXAMPLE, THE PRESENT REGULATIONS AT §300.126 CONTAIN DETAILED REQUIREMENTS FOR THE DESCRIPTION OF FACILITIES, PERSONNEL, AND SERVICES NECESSARY THROUGHOUT THE STATE TO MEET THE GOAL OF PROVIDING FULL EDUCATIONAL OPPORTUNITY FOR ALL HANDICAPPED CHILDREN. THE PROPOSED REGULATIONS AT §300.16(c) CONTAIN ONLY THE MOST GENERAL STATEMENT.

- IN THE ABSENCE OF THIS TYPE OF DETAIL, HOW IS THE CONGRESS ABLE TO MAKE A DETERMINATION CONCERNING THE AMOUNT OF APPROPRIATIONS NECESSARY TO IMPLEMENT THE LAW? IN OTHER WORDS, ISN'T THE REDUCTION OF THIS DETAIL A METHOD BY WHICH THE DOCUMENTATION WHICH IS SO ESSENTIAL TO CONGRESS IN THIS TIME OF TIGHT BUDGETS IS DENIED, THUS MAKING A REDUCTION IN APPROPRIATIONS MORE LIKELY?

RESPONSE: The proposed regulations do remove numerous requirements for detailed documentation of State policies and procedures and instead, allow States to determine how best to provide the required information. However, the elimination of these requirements does not affect the Department's ability to provide Congress with the information required under Section 618 of the Act and used by the Congress in determining the amount of appropriations. All of the information that is transmitted annually by the Secretary to the Congress is obtained through annual performance reports submitted by the States. The State plans, which are submitted once every three years, have not been used to collect data that is reported annually to the Congress.

QUESTION: HOW DO THESE PROPOSED REGULATORY CHANGES GUARANTEE A REDUCTION IN PAPERWORK?

A STATE DIRECTOR OF SPECIAL EDUCATION SAID THAT THE PAPERWORK THEY ARE NOW ACCUSTOMED TO WILL BE REPLACED BY NEW AND DIFFERENT PAPERWORK. STATES WILL HAVE TO DEVELOP NEW POLICIES AND PROCEDURES WITHOUT THE BENEFIT OF NATIONAL STANDARDS AS A BASIS.

RESPONSE: The proposed regulatory changes eliminate numerous paperwork requirements. For example, the Preliminary Regulatory Impact Analysis indicates that nearly half the page volume of the State plans would be eliminated if the proposed changes to the State plan requirements were made. The proposed regulations also reduce the paperwork burden on LEAs by eliminating the requirement that LEAs submit specified statements of procedures and other descriptive program and policy information in the LEA application. Instead, the LEA would be obligated to provide an assurance satisfactory to the SEA that it has adopted the policies and procedures required by the Act. By eliminating excessive regulatory overlay and by adhering more closely to statutory language, the proposed regulations are designed to provide increased flexibility to State and local agencies in meeting statutory requirements. Although a few of the proposed changes may require State or local agencies to establish policy in areas not addressed by the current regulations, these burdens are far outweighed by the removal of paperwork burdens in other areas.

QUESTION: THE STATUTE SPECIFICALLY INDICATES THAT HANDICAPPED CHILDREN ARE TO BE EDUCATED WITH NONHANDICAPPED CHILDREN TO THE MAXIMUM EXTENT POSSIBLE. ONE OF THE MOST COMMON WAYS FOR CHILDREN TO MEET EACH OTHER IS IN NONACADEMIC SETTINGS SUCH AS MEALS AND RECESS. THE PRESENT REGULATIONS SPECIFY THAT PUBLIC AGENCIES INSURE THAT HANDICAPPED CHILDREN PARTICIPATE WITH OTHER CHILDREN IN NONACADEMIC SETTINGS SUCH AS MEALS AND RECESS. THIS REQUIREMENT IS DELETED IN THE PROPOSED REGULATIONS.

HOW DOES THIS DELETION SERVE THE GENERAL PRINCIPLE OF EDUCATING HANDICAPPED CHILDREN IN THE LEAST RESTRICTIVE ENVIRONMENT WHICH INCLUDES RECREATION AS A RELATED SERVICE?

RESPONSE: Current §300.553, Nonacademic settings, is taken from a requirement in the Department's regulations under Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 regulations includes the following statement: "[A new paragraph] specifies that handicapped children must be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children."

The applicable EHA-B statutory provision relating to the least restrictive environment requires that a handicapped child be educated with nonhandicapped children to the maximum extent appropriate, and that such a child not be removed from the regular educational environment except in limited, specified circumstances.

This provision is reiterated in proposed §§300.160 and 300.161. The Department does not construe these provisions as applicable only in strictly academic settings.

QUESTION: THE DEVELOPMENT OF AN INDIVIDUALIZED EDUCATION PROGRAM IS ONE OF THE KEY ELEMENTS OF A PROVISION OF A FREE APPROPRIATE EDUCATION. THE PRESENT REGULATIONS RECOGNIZE THE IMPORTANCE OF THIS PROVISION AND REQUIRE THAT PUBLIC AGENCIES INITIATE AND CONDUCT MEETINGS CONCERNING THE I.E.P. WITHIN THIRTY DAYS OF DETERMINING THAT THE CHILD NEEDS SPECIAL EDUCATION AND RELATED SERVICES. THE PROPOSED REGULATIONS DELETE THE REQUIREMENT THAT PUBLIC AGENCIES HOLD THE I.E.P. MEETING WITHIN THIRTY DAYS.

WHAT GUARANTEES ARE THERE THAT SUCH A MEETING WILL BE PROMPTLY HELD AND THE DANGERS OF DELAY IN IMPLEMENTING AN I.E.P. AVOIDED?

RESPONSE: The proposed regulations no longer require the development of an individualized education program (IEP) within 30 days after evaluation. However, State plan requirements are modified to require States to set reasonable timelines for conducting IEP meetings after children are evaluated. The State-determined timelines will ensure that children's IEPs are developed without unreasonable delay. The timelines are part of the State plan and are, therefore, subject to public comment and Departmental review and approval.

QUESTION: IN GENERAL, WHAT IS THE ESTIMATED IMPACT ON THE QUALITY OF EDUCATIONAL SERVICES FOR HANDICAPPED CHILDREN OF REPLACING THE CURRENT REGULATIONS WHICH ARE RELATIVELY DETAILED WITH A MUCH BRIEFER STATEMENT?

RESPONSE: One intention of deregulation is to reduce paperwork and administrative burden with the objective of allowing more time for direct services to children or for improved planning. Overly prescriptive regulations have also been removed because it is felt that better decisions regarding programs for handicapped children can be made by those most faimilar with the circumstances of individual children, families, or districts. However, some regulations are necessary to establish compliance standards, provide guidance to implementers, and ensure administrative efficiency. Some examples of this in the proposed regulations are:

- Addition of a requirement for a timeline between identification and evaluation to help alleviate the problem of children on waiting lists for evaluation;
- Clarification on the qualifications of hearing officers;
- Clarification of the selection and assignment of surrogate parents;
- Clarification of financial responsibility for children unilaterally placed in schools or facilities by other agencies;
- Addition of a requirement for the comprehensive assessment of a child's educational needs;
- Clarification of the use of parents' insurance proceeds; and
- Addition of a section concerning disciplinary rules and procedures.

QUESTION: THE STATUTE AND THE PRESENT REGULATIONS PROHIBIT THE USE OF FUNDS UNDER PART B OF THE ACT TO SUPPLANT STATE AND LOCAL FUNDS. 20 U.S.C. §1414(a)(2)(B), 20 U.S.C. §1413(a)(9); 34 C.F.R. §300.230. THE PROPOSED REGULATIONS ADD A SECTION PROVIDING THAT "AN ALLOWANCE MAY BE MADE FOR ... OTHER EXTRAORDINARY, NONRECURRING EXPENDITURES." PROPOSED §300.85. THE PROPOSED REGULATIONS, THEN, WOULD NOT COUNT THESE "EXTRAORDINARY, NONRECURRING EXPENDITURES" AS STATE FUNDS EXPENDED AND THUS SUBJECT TO THE RULE AGAINST SUPPLANTING. THE TERM "EXTRAORDINARY, NONRECURRING EXPENDITURES" IS A VAGUE ONE AND ONE WHICH IS NOT DEFINED IN THE PROPOSED REGULATIONS. WHAT GUARANTEES ARE THERE THAT THIS EXCEPTION WILL NOT BE ABUSED?

RESPONSE: Under current regulations relating to the prohibition on supplanting, an "allowance" may be made for, among other things, "unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities." Current §300.230(b)(1)(ii). The purpose of this provision is to ensure that local educational agencies (LEAs) will not be inhibited by the prohibition on supplanting from making capital improvements and other special expenditures on behalf of handicapped children. However, this important objective is not fully achieved by the current regulations because of the limitation to long-term purposes. It is also possible that an LEA might be inhibited from making certain extraordinary short-term expenditures for fear that it would be permanently bound by the supplanting prohibition to continue to spend at least at that level. As an example, a small school district might need to pay for a high-cost residential placement for one or two children in order to provide them a free appropriate public education. The Department does not believe that the supplanting prohibition was intended to require the district to continue this high level of expenditures after those placements are no longer necessary. Therefore, the proposed regulations expand the category of expenditures for which an allowance may be made to include extraordinary, nonrecurring expenditures.

The Department does not believe that this expanded provision will be abused. First, the Department has received no reports of abuse under the current provision which permits an allowance to be made for certain long term expenditures. Second, the State educational agency, which would determine initially whether an allowance was warranted, remains responsible for ensuring the compliance of all LEAs with the supplanting prohibition through the review of LEA applications and monitoring and enforcement activities. See proposed §§300.35(a), 300.74, 300.85(a), 300.170(c). Third, the Department will continue to monitor States to ensure that they are properly complying with and enforcing the supplanting prohibition.

QUESTION: THE STATUTE AT 20 U.S.C. §1413(a)(3) REQUIRES THAT STATE PLANS SET FORTH A DESCRIPTION OF PROGRAMS AND PROCEDURES FOR THE DEVELOPMENT AND IMPLEMENTATION OF A COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT INCLUDING, AMONG OTHERS, THE INSERVICE TRAINING OF PERSONNEL, AND DETAILED PROCEDURES TO ASSURE THAT ALL PERSONNEL NECESSARY ARE APPROPRIATELY AND ADEQUATELY PREPARED AND TRAINED. THE LEGISLATIVE HISTORY OF THE ACT ALSO INDICATES THE IMPORTANCE OF THIS TRAINING. AS SENATOR RANDOLPH STATED DURING THE DEBATES: "CONTINUOUS TRAINING IS VITALLY NECESSARY, PARTICULARLY IF CHILDREN ARE TO BE MAINSTREAMED INTO THE CLASSROOM. TEACHERS MUST RECEIVE TRAINING THAT NOT ONLY PROVIDES TECHNICAL ASSISTANCE NECESSARY TO TEACH HANDICAPPED CHILDREN, BUT ALSO DEALS WITH THE POTENTIAL PROBLEM OF 'ATTITUDINAL BARRIERS.'" 121 CONG. REC. 19483 (1975). THE PRESENT REGULATIONS (§§300.380 - 300.386) PROVIDE DETAILED REQUIREMENTS CONCERNING THIS TRAINING. HOWEVER, IN THE PROPOSED REGULATIONS, (§300.29) ONLY THE VERY BASIC REQUIREMENTS ARE KEPT AND MUCH OF THE IMPORTANT DETAIL ON INSERVICE TRAINING IS DELETED. HOW DOES THIS DELETION FULLFILL THE VITAL NEED FOR THIS TYPE OF TRAINING?

RESPONSE: The proposed regulations delete the definition of inservice training and the requirement for a detailed outline of specifications to be included in the State plan because these are not set forth in the EHA-statute.

State and local educational agencies will have more flexibility in the conceptualization and implementation of the comprehensive system of personnel development (CSPD). Dramatic improvements have occurred in the seven years since P.L. 94-142 was enacted. Therefore, in reviewing the regulations on CSPD, special attention was focused on eliminating or reducing excessive paperwork requirements and regulatory detail that result in expenditure of time and resources on administrative activities and inappropriately limit the discretion of educational agencies in carrying out the program. The proposed regulations, however, implement all requirements of 20 U.S.C. §1413(a)(3).

Regarding the specific concern about training for teachers of mainstreamed children, the experience of the past seven years indicates that this training has been a primary ongoing activity given the highest priority by State and local educational agencies, as evidenced by a continuing increase in the percentage of handicapped children being educated in the regular educational environment -- up to 67% of all handicapped children. The Department's Fourth Annual Report to Congress on the Implementation of P.L. 94-142(1982) describes a variety of State, district, and building-level plans for training special education personnel to provide consultation, guidance, and support to their regular education peers, as well as State interdisciplinary models to focus on the more severely handicapped.

State educational agencies have provided technical assistance and evaluation consultants to develop models for providing training and consultation to district administrators. JWK International conducted a longitudinal study from 1978 through 1981 to identify strategies which promote the effective integration of handicapped children. The study reported the use of a variety of inservice training models which contributed to improved attitudes of regular teachers toward handicapped children in their classrooms.

Federal assistance from the Handicapped Personnel Preparation program provided for the development of training models, training delivery, and coordinating efforts through the Regular Education Inservice priority to train 207,830 regular education teachers from 1975 through 1981.

State and local educational agencies have made great strides in the area of training regular educators. From their own resources and with assistance from the Federal level, these public agencies have developed training models, expertise, and continued motivation to meet the Act's requirements without extensive, detailed procedures in regulations.

QUESTION: THE EDUCATION FOR THE HANDICAPPED ACT REQUIRES THAT IN ORDER TO RECEIVE ASSISTANCE UNDER THE ACT, A STATE MUST HAVE IN EFFECT A POLICY THAT ASSURES ALL HANDICAPPED CHILDREN THE RIGHT TO A FREE APPROPRIATE PUBLIC EDUCATION. (20 U.S.C. §1412). IN THE PROPOSED REGULATIONS, THE IMPOSITION OF DISCIPLINARY SANCTIONS ON HANDICAPPED CHILDREN ARE ALLOWED AND PROVISION IS MADE FOR A DETERMINATION OF WHETHER THE CHILD'S BEHAVIOR WAS CAUSED BY THE HANDICAP "WHERE A HEARING IS REQUIRED BY LAW OR AGENCY POLICY." (PROPOSED REGS. §300.114, 47 FED. REG. 33854). WHAT ASSURANCE IS THERE THAT DISCIPLINARY SANCTIONS WILL NOT BE IMPOSED ON A HANDICAPPED CHILD WHOSE BEHAVIOR IS CAUSED BY HIS OR HER HANDICAP WHERE THERE IS NO HEARING REQUIRED BY LAW OR AGENCY POLICY? IF DISCIPLINARY SANCTIONS WERE IMPOSED ON A HANDICAPPED CHILD BECAUSE OF BEHAVIOR DUE TO HIS OR HER HANDICAP WOULDN'T THIS BE A VIOLATION OF THE STATUTE'S MANDATE FOR A FREE APPROPRIATE PUBLIC EDUCATION?

RESPONSE: The reasonable exercise of authority by school officials is necessary to maintain an atmosphere conducive to learning. Where handicapped students pose a danger to themselves or others, or disrupt educational services, school officials should have the necessary authority to deal with such incidents. However, proposed §300.114(d) specifically states that "the agency shall ensure that its disciplinary standards and procedures are applied in a way that does not discriminate against handicapped children." This provision protects handicapped children from the imposition of the more serious disciplinary sanctions (i.e., those requiring a hearing by law or agency policy) if their behavior is due to a handicapping condition.

SEP intends to vigorously monitor this aspect of the proposed regulations to ensure that: (a) disciplinary procedures are not indiscriminately applied to handicapped students and, (b) that the nature of the handicap is considered as a plausible contributing factor prior to disciplinary action. In addition, OCR also monitors LEA suspension and expulsion practices concerning handicapped students. As a result of these combined monitoring efforts, it is improbable that disciplinary procedures will result from a behavior that is caused by a child's handicapping condition.

QUESTION: THE STATUTORY DEFINITION OF SPECIAL EDUCATION [20 U.S.C. §1401(16)] INCLUDES PHYSICAL EDUCATION. IN THE HOUSE REPORT, PHYSICAL EDUCATION WAS DISCUSSED IN SOME DETAIL AND IT WAS STATED THAT "THE COMMITTEE EXPECTS THE COMMISSIONER OF EDUCATION TO TAKE WHATEVER ACTION IS NECESSARY TO ASSURE THAT PHYSICAL EDUCATION SERVICES ARE AVAILABLE TO ALL HANDICAPPED CHILDREN, AND HAS SPECIFICALLY INCLUDED PHYSICAL EDUCATION WITHIN THE DEFINITION OF SPECIAL EDUCATION TO MAKE CLEAR THAT THE COMMITTEE EXPECTS SUCH SERVICES, SPECIALLY DESIGNED WHERE NECESSARY, TO BE PROVIDED AS AN INTEGRAL PART OF THE EDUCATIONAL PROGRAM OF EVERY HANDICAPPED CHILD." H. REPT. NO. 94-332 AT 9. THE PRESENT REGULATIONS INCLUDE SEVERAL SECTIONS (§§300.306, 300.307) REQUIRING THE PROVISION OF PHYSICAL EDUCATION. THE PROPOSED REGULATIONS DELETE THESE PROVISIONS. IN LIGHT OF THE STATUTORY LANGUAGE AND THE LEGISLATIVE HISTORY, WHY ARE THESE PROVISIONS DELETED?

RESPONSE: Consistent with the Department's attempt to rely upon the process established by the statute for determining the appropriate services for a handicapped child, current provisions that impose requirements not found in the statute are deleted. Proposed §300.113 (Access to Programs and Services) makes it clear that the proposed regulations do not affect any legal obligation of a public agency to "make available to handicapped children educational programs and services made available to nonhandicapped children by the agency, including...physical education..." In addition, physical education may be included in a child's IEP, and thus be required for that child whether or not such a service is provided to nonhandicapped children.

QUESTION: SECTION B UNDER THE TEXT OF THE RELEASE DESCRIBES THE RATIONALE FOR REQUIRING STATES TO SET REASONABLE TIMELINES BETWEEN IDENTIFICATION AND EVALUATION AND THE ESTABLISHMENT OF AN IEP. WHAT CRITERIA WILL BE USED AT THE DEPARTMENT LEVEL FOR DETERMINING WHETHER A GIVEN STATE'S TIMELINE IS REASONABLE? WILL THE PROVISION THAT EACH STATE SETS TIMELINES "IN ACCORDANCE WITH THEIR INDIVIDUAL CIRCUMSTANCES" INSURE SAFEGUARDS FOR ALL CHILDREN? (REFER TO PAGE XI-XII)

RESPONSE: Proposed §300.18(b) requires that each State plan include "reasonable" timelines for the interval between the identification of a child as handicapped and the child's evaluation, in order "to ensure a prompt evaluation". Similarly, proposed §300.20(b) requires that each State plan include "reasonable" timelines for the interval between the evaluation of the child and the establishment of the child's IEP in order "to ensure the prompt establishment of an IEP".

The Secretary believes that reasonable timelines for evaluation and the establishment of an IEP are necessary to ensure that each child has available a free appropriate public education (FAPE), but that it is not necessary to establish at the Federal level specific nationwide timelines.

The statute does not set forth a nationwide standard for completion of this step. Although the current regulations impose a 30 day limit on the interval between a child's evaluation and development of an individualized education Program (IEP), States and local districts (about a third of the total in a recent survey) had a timeline shorter than 30 days. At the same time, there are instances where more than 30 days is an appropriate period for developing an IEP. For example, it might be necessary to place a child in a program temporarily before the IEP is finalized, to aid in determining the most appropriate placement. In other instances, the Department may consider such factors as school districts with a large transient population, a high percentage of minority language problems, or certain other legitimate administrative reasons. However, the Department does not consider timelines of thirty days to be unreasonable, per se, and will look carefully at all requests to establish intervals in excess of thirty days. The Department's view is that a reasonable period is best determined in the first instance by levels of government closer to the performance of the job, taking into account the circumstances in each State.

It is with these factors in mind that the Department will review the reasonableness of the timelines included in State plans submitted for its approval. The timelines must provide sufficient opportunity to the affected agencies to conduct a thorough evaluation and to develop an IEP, based on that evaluation, that meets the child's unique needs, but they must also ensure that the IEP will be implemented as soon as the services required in it are required to meet the needs of the child.

QUESTION: HOW WILL "ADVERSELY AFFECT THE CHILD'S ABILITY TO BENEFIT FROM A REGULAR EDUCATION PROGRAM" BE DETERMINED? WHAT CRITERIA WILL BE UTILIZED NOW THAT "ADVERSE EFFECT ON PERFORMANCE" WHICH WAS MEASURABLE IS NOT UTILIZED? WHAT EFFECT, IF ANY, WILL THIS HAVE ON MILD HANDICAPS?
(SEE 300.4(b)(4))

RESPONSE: The language "adversely affects the child's ability to benefit from a regular education program" is used in the proposed regulatory definition of "handicapped child" because it more accurately reflects the statutory definition of "handicapped child". The existence of an impairment is not, by itself, enough to make a child handicapped within the meaning of the Act; the child must also demonstrate a need for specialized services beyond those afforded in the general program of instruction for nonhandicapped children. A child's need for special education is determined through the evaluation and IEP process.

During the regulations review process, many comments were received from various sources indicating a lack of understanding of the phrase "adversely affects educational performance" used in the current regulations. Also, many other comments indicated that the definition of "handicapped child" should emphasize a child's need for specially designed instruction. Officials of the General Accounting Office (GAO) testified in 1980 at the Oversight Hearings on P.L. 94-142 that the present regulatory language was often viewed as ambiguous with respect to children with minor impairments who may require only a related service. For example, the effect of a child's speech impairment on academic achievement is not always readily apparent and in many cases it would be difficult or time-consuming to prove that there is, in fact, an adverse effect. However, the proposed language would help alleviate this concern.

If a child is receiving a service specified as a related service (the statute expressly lists speech pathology as a related service) it may be considered special education if the service meets the Act's definition of special education and is considered special education rather than a related service under State standards. The proposed change in the definition of "handicapped child" will not result in denial of services to children with mild handicaps who require special education or related services. The change should make it clear that the need for specialized services is the overriding consideration.

QUESTION: DOES THE ESTABLISHMENT OF "REASONABLE LIMITATIONS" ON THE PROVISION OF RELATED SERVICES AFFECT THE INTENT OF FAPE?
(SEE 300.4(b)(10)(11))

RESPONSE: The proposed rule permitting the establishment of reasonable limitations on related services does not affect the requirement that each State ensure a free appropriate public education for all handicapped children. See 20 U.S.C. 1412(1) and §300.15 of the proposed regulations.

The "reasonable limitations" provision would complement the new provision, at §300.39 of the proposed rules, which requires States to include in State plans a description of policies and procedures to ensure the provision of related services. The first provision should not adversely affect the availability of necessary services at the local level, nor does it state a novel principle. For example, many public agencies already have guidelines for establishing the frequency and duration of speech pathology sessions. Some agencies routinely arrange for services such as physical and occupational therapy to be provided at specific locations. Current Departmental guidance, in a comment following §300.13 of the existing regulations, contemplates that particular services might be provided by one of several qualified providers. Parents and agencies appear to be able to make the judgments contemplated by the proposed rule within the framework of the procedures established by the statute.

QUESTION: WHAT ASSURANCE IS THERE THAT OTHER AGENCIES NOT SUBJECT TO DEPARTMENT OF EDUCATION REGULATIONS BUT WHO DO PLACE HANDICAPPED CHILDREN IN FACILITIES FOR NON-EDUCATIONAL REASONS WILL "BEAR THE FINANCIAL RESPONSIBILITY" FOR EDUCATIONAL COSTS?

RESPONSE: Under the proposed regulations, it is immaterial that the agency required to bear the financial responsibility is not an educational agency or that the placement in question is made for non-educational reasons. The State plan is submitted on behalf of the State as a whole (§300.2(b)), and the State educational agency remains ultimately responsible for ensuring that a free appropriate public education is made available at no cost to the parents.

For example, when a public agency places a child in a school or facility for non-educational reasons, it is not necessarily the case that the proposed regulations require the placing agency to bear the financial responsibility for providing educational services to the child. Rather, the proposed regulations continue to recognize that the State has both the authority and the responsibility to allocate financial responsibility among public agencies in the State where more than one agency could be responsible for a particular child. In particular, the proposed regulations expressly defer to State law or interagency agreement for a determination of which agency is responsible for the costs of the child's education.

Program experience has revealed, however, that the provision of needed services to handicapped children is sometimes delayed while disputes over which public agency is financially responsible for those services are resolved. Therefore, in the absence of applicable State law or interagency agreement, the proposed regulations would, for the first time, clearly place the responsibility on a particular agency, namely the agency that placed the child in the school or the facility.

QUESTION: IN WHAT INSTANCES HAVE PART B REGS BEEN CHANGED WITH THE ASSUMPTION THAT SECTION 504 WILL ASSURE THIS PROVISION? HOW WILL THIS BE COORDINATED WITH MONITORING ACTIVITIES SINCE TWO DIFFERENT OFFICES ARE CHARGED WITH IMPLEMENTATION OF SECTION 504 AND PART B? WHAT ABOUT POSSIBLE CHANGES IN 504 REGULATIONS?

RESPONSE: Throughout the development of the Part B NPRM, consultations with OCR staff occurred regularly. Changes in the Part B regulations were not made on the assumption that Section 504 would serve to continue a specific requirement. Rather, these changes were made on the basis of the language and history of the statute, the principles of statutory construction (including the principle that conditions on the provision of Federal funds must be clearly articulated in the authorizing statute), and the directives in Executive Order 12291.

QUESTION: WOULD YOU EXPLAIN THE RELATIONSHIP BETWEEN NOTICE AND CONSENT WITH REGARD TO HANDICAPPED CHILDREN AND THE REFERENCE TO GEPA - SECTION 439? WHY WAS CONSENT ELIMINATED AND DOESN'T THAT AFFECT PARENT INVOLVEMENT BY PLACING THE BURDEN OF PROOF ON THEM?

RESPONSE: The statute does not contain any express requirement for parental consent prior to initial evaluation or initial placement in special education. Under Section 439(b) of the General Education Provisions Act (GEPA), commonly referred to as the Hatch Amendment, a student need not submit to psychiatric or psychological testing without prior parental consent if that testing is intended to reveal information that could be embarrassing. There is no need to reiterate a consent requirement relating to this type of testing in the proposed regulations. In addition, most States (84%) currently require parental consent prior to evaluation through State law or regulations. Statutory prior notice requirements remain in place, as do parental rights to a due process hearing, in case of disagreement on the evaluation or placement of a child.

With regard to parental consent to an initial placement in special education, the "pendency" provision of the statute (20 U.S.C. 1415(e)(3)) operates as a consent requirement of sorts. If a parent objects to an agency's proposed initial placement and initiates a due process hearing, this provision requires that the child remain in the then current educational placement during the pendency of the proceedings in both the administrative and the judifical forums. See proposed §300.153.

QUESTION: WHY HAVE THE TIMELINES FOR DUE PROCESS BEEN EXTENDED? ARE THESE BEING MET NOW?

RESPONSE: The proposed regulations expand the maximum period for final decisions on hearings from 45 to 60 days, and expand the maximum period for reviews from 30 to 45 days. Of the 1166 due process hearings in 1980-81, it is estimated that over 80% exceeded the current timelines, suggesting that the current timelines are too short.

Once a parent formally requests a hearing, the timeline for completion is triggered. Mediation may be initiated after the formal request for a hearing, but timelines still must be met. The expanded period for final decisions may encourage the use of mediation.

The opportunity for parents and agencies to resolve disputes through an impartial hearing is a necessary and desirable safeguard. However, evaluation studies supported by SEP have shown that schools and parents have found that the process has become more adversarial than perhaps was anticipated, and that the costs of using this procedural safeguard can be prohibitive in some instances. LEAs and SEAs have sought to reduce these effects and costs by developing less formal and legalistic procedures for settling disagreements. These procedures, according to studies, show promise in fostering more cooperative attitudes and relationships between parents and schools. A guideline included with the proposed regulations encourages the use of these informal approaches. Specific timelines are still considered necessary to ensure that the services required by children are not unduly delayed or denied.

QUESTION: WHY WAS THE REQUIREMENT FOR A "MULTIDISCIPLINARY TEAM" ELIMINATED IN FAVOR OF "MULTIDISCIPLINARY APPROACH" AND ONLY FOR SOME TYPES OF CHILDREN?

RESPONSE: The proposed regulations continue to require multidisciplinary evaluations for all children suspected of having severe, multiple, or complex disorders, including a specific learning disability. Moreover, proposed §300.158(g)(1) requires that each child's evaluation be sufficiently comprehensive to diagnose and appraise the child's suspected impairment. As suggested in a comment in the current regulations, in many cases a full array of professionals is not needed to diagnose a child's impairment. For example, most speech impaired children can be appropriately assessed by a speech-language pathologist, who would refer the child to other specialists for further evaluation as required. However, it may well be necessary to involve professionals from several disciplines at some point in a child's evaluation to ensure that the "comprehensive assessment" requirement will be met.

QUESTION: WHY WAS "QUALIFIED" ELIMINATED?

RESPONSE: Agencies are still expressly required to use qualified personnel for administering tests and other materials used for placement decisions and for the provision of related services [See proposed §§300.158(d) and 300.4(b)(10)(ii)(B)]. The definition of "qualified" has been eliminated as unnecessary since it simply deferred to State requirements for certification or licensing and because it is not set forth in the EHA-B statute. It is not anticipated that this omission will have any effect since States will continue to have standards and procedures to determine and assure appropriate qualifications for personnel in programs subject to State authority.

QUESTION: THE FIVE DAY DISCLOSURE PROVISIONS WOULD APPEAR TO BENEFIT EVERYONE CONCERNED, I.E., REDUCES "SURPRISE", SAVES TIME, ETC. WHY WAS IT ELIMINATED?

RESPONSE: The proposed regulations do not continue to authorize a party, as a matter of Federal law, to bar the introduction of evidence that was not disclosed to that party at least five days before the hearing. The provision of current regulations (§300.508(a)(3)) is not found in the statute. Compare 20 U.S.C.1415(d).

Since EHA-B regulations do not, and could not, contain all salutary procedural rules for the conduct of hearings and reviews, we have chosen to entrust the development of a body of rules for this purpose, including rules to prevent surprise and ensure the basic fairness of the proceedings, to State and local agencies. The Department's intention in this regard is set forth in the guideline following proposed §300.149. States may wish to continue the policy reflected in current regulations, or they may wish to allow hearing officers to adopt less rigid, or different, means of addressing this subject. The Department believes this is a proper matter for the exercise of judgment at other than the Federal level.

QUESTION: WON'T THE NUMBER OF HEARINGS INCREASE BASED ON CHANGES IN CONSENT, INDEPENDENT EVALUATION, RELATED SERVICES? WON'T MORE ISSUES NEED RESOLUTION IN HEARINGS AND COURT CASES?

RESPONSE: Some of the proposed changes may result in due process hearings and litigation where there are disagreements between parents and public agencies on the implementation of these provisions. Other proposed changes (such as the guidance provided on the issue of medical services) are intended to reduce confusion caused by the lack of clear policy and, thus, may decrease the likelihood of further litigation.

QUESTION: NOW THAT SECTION 76.781(c) OF 34 CFR (EDGAR) DOES NOT APPLY TO THIS PROGRAM, WHAT RECOURSE IS THERE FOR APPEALING A STATE'S DECISION ON COMPLAINTS?

RESPONSE: Section 76.780 of the EDGAR requires a State participating in any of the Department's various State-administered programs to adopt procedures for receiving and resolving complaints alleging that the State or a subgrantee (such as a local educational agency) is violating a Federal statute or regulation that applies to the program. According to 34 CFR 76.781(c), these procedures must include the right to request the Secretary of Education to review the final decision of the State on the complaint.

The Secretary believes that applying the EDGAR Secretarial review provision to the EHA-B program is unnecessary and duplicative for those complaints that may be brought under the detailed due process provisions peculiar to the EHA-B. Section 615 of the EHA provides for the presentation of complaints on any matter relating to the provision of a free appropriate public education to a handicapped child, with impartial hearings and decisions at both the local and State level. Finally, any party aggrieved by the State's final decision may bring an action in State or federal court, which has full authority to grant whatever relief it determines is appropriate. These due process protections, which are available to both parents and public agencies, are unaffected by the proposed regulations.

A complaint that is not subject to the due process mechanism established by Section 615 of the Act, such as a complaint that the State did not follow the required procedures in revising its State plan, can still be submitted to the Department for its consideration. The Special Education Programs office maintains a file of information on each State that is actively relied upon as the basis for site visits, compliance reviews and other monitoring activities.

QUESTION: WILL THE REDUCTION IN LRE REGULATIONS CHANGE THE CURRENT SERVICE DELIVERY SYSTEM ACROSS THE COUNTRY? HOW WILL THE CHANGE AFFECT PLACEMENT DECISIONS?

RESPONSE: The proposed regulations reaffirm the basic LRE tenets of P.L. 94-142 that handicapped children are to be educated with nonhandicapped children to the maximum extent appropriate and that the removal of handicapped children from the regular educational environment is only to occur when education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The requirement in the current regulations that a continuum of alternative placements be available has been deleted from the proposed regulations. This requirement, which does not appear in the statute, has often worked against the individualized placement of handicapped children. SEP's monitoring has revealed that school districts developed a range of placement alternatives, but that particular placement alternatives became the only placements for particular types of handicapping conditions. The removal of the requirement for the establishment of a continuum of alternative placements does not alter the LEA's responsibility to provide an appropriate placement for each handicapped child even if that placement is not available within the jurisdiction of that agency. Instead, it means that placement decisions will be made on the individual needs of the child rather than on what vacancies are available within the agency.

A guideline in the proposed regulations sets a clearcut and narrow standard for defining disruptive behavior. Monitoring visits and special studies show that students are currently being excluded from certain placements for behavioral reasons, and that disruptive behavior is sometimes very broadly defined. The guideline in the proposed regulations makes it clear that before a student can be excluded from a particular placement, the disruptive behavior must be serious, not speculative in nature, and not isolated incidents. Thus we would expect that fewer handicapped students would be excluded from regular classes for vague, ill-defined claims of disruptiveness.

QUESTION: BY PROPOSING TO REDUCE THE CONTENT OF LOCAL APPLICATIONS FOR PART B FUNDS TO A SET OF ASSURANCES, HOW WILL THE FEDERAL GOVERNMENT MONITOR THE IMPLEMENTATION OF THE PART B PROGRAM AND BE ASSURED THAT CONGRESSIONAL PROGRAM INTENT IS CARRIED OUT ON THE LOCAL LEVEL?

-- WHAT ROLE WILL THE STATE EDUCATION AGENCY PLAY IN MONITORING AND EVALUATING LOCAL PROGRAMS? IS THIS ROLE SPECIFICALLY DEFINED IN THE PROPOSED REGULATIONS?

-- WHAT, IF ANY, ADDITIONAL ADMINISTRATIVE "BURDENS" WILL THIS PROPOSED CHANGE IN LOCAL APPLICATION CONTENT PLACE ON STATE EDUCATIONAL AGENCIES?

THE PROPOSED REGULATIONS WOULD LOOSEN THE FISCAL ACCOUNTABILITY REQUIREMENTS BY ELIMINATING THE MAINTENANCE OF EFFORT PROVISIONS TIED TO SPECIFIC USES OF FUNDS AND SUBSTITUTING THEREFOR A COMPREHENSIVE MAINTENANCE OF EFFORT REQUIREMENT. HOW WOULD THESE PROPOSED CHANGES SIMPLIFY ACCOUNTING PROCEDURES ON THE STATE AND LOCAL LEVEL, WHILE ASSURING CONSISTENT FINANCIAL SUPPORT FOR THE EDUCATION OF HANDICAPPED CHILDREN?

RESPONSE: The statute assigns to the Secretary responsibility for measuring and evaluating the effectiveness of State efforts to assure the free appropriate public education of all handicapped children. It is the role of the State educational agency (SEA) to evaluate and monitor local programs. This role is specifically addressed in the proposed regulations. Proposed §300.36 maintains the requirement that SEAs have "procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children, including evaluation of IEPs." Also, under §300.170 of the proposed regulations, the SEA is required to undertake the activities described in Part 76 of the Department's General Administrative Regulations (EDGAR) with respect to monitoring and evaluating educational programs within the State to ensure compliance with the statute and regulations. We do not anticipate any additional administrative burdens being placed on SEAs.

For the most part, the information deleted by the proposed regulations from State plans and LEA applications is already on file in SEAs and in Special Education Programs (SEP). SEP, for example, through its screening process and the development of State profiles, maintains the following data for each State to assist its pre-site monitoring:

- State plan
- State statutes
- State policies and procedures
- OCR 101-102 data
- OCR complaint investigations

- SEP complaint investigations
- NCES data
- Child count data
- Performance and financial report data
- Audit and other data supplied by the Office of the Inspector General
- Previous State plan approval and compliance activities
- On-going litigation and reports of judicial decisions
- Data and information supplied on States regarding specific policy and compliance issues

Data now collected from States under requirements proposed to be deleted from current regulations governing State plans will also continue to be available from other sources, such as performance reports. Federal and State agencies maintain the authority to request whatever information they believe necessary to verify State and local educational agency assurances. See, with respect to State review of local applications, proposed §300.74.

The proposed regulations drop the existing prohibition against using Part B funds to supplant State or local funds for any particular cost. While the supplanting prohibition on the level of funds expended still applies, the particular services paid for with these funds need not remain fixed. This will make LEAs better able to adjust the provision of services to the changing needs of handicapped children, without undermining the basic principle that Part B funds are to be used to enhance local programs, not to replace local with Federal funds.

QUESTION. NON-STATUTORY REQUIREMENTS, SUCH AS CRITERIA FOR SELECTING HEARING OFFICERS AND METHODS AND PROCEDURES OF CONDUCTING HEARINGS AND REVIEWS, WOULD BE REPLACED BY GUIDELINES SUGGESTING REFERENCE TO INDIVIDUAL STATE ADMINISTRATIVE PROCEDURE ACTS FOR EVIDENTIARY AND OTHER TECHNICAL PROCEDURAL DETAILS. WHAT ADMINISTRATIVE "BURDENS" ARE A DIRECT RESULT OF THE CURRENT REGULATIONS GOVERNING THE DUE PROCESS PROVISIONS OF LAW? HOW WOULD THESE "BURDENS BE ELIMINATED BY THE PROPOSED CHANGES?

RESPONSE: The Department has not surveyed State and local educational agencies and advocates of handicapped children to determine the nature and extent of administrative burdens imposed by current regulations governing hearings and reviews under 20 U.S.C. 1415. However, the proposals respecting the selection of hearing and review officers and the conduct of hearings and reviews will have a number of salutary effects. Some of these effects are described below.

First, the proposed regulations entrust the development of a body of rules governing hearings and reviews to State and local agencies, subject to fewer constraints at the Federal level. The Department thinks decisions on evidentiary and procedural matters not addressed by the statute are best made by the agencies charged by law with the responsibility for establishing and maintaining procedural safeguards. See 20 U.S.C. 1415(a).

Second, the criteria for selecting impartial officers to conduct the due process proceedings required by the statute have been clarified and expanded. Under proposed §300.148, neither a hearing nor the review of a hearing may be conducted by either an employee of the State educational agency or an employee of a local educational agency or an intermediate educational unit which is involved in the education or care of the child. The changes should resolve nettlesome and recurring questions on the subject that have resulted in substantial litigation.

A third example is the clarification of requirements for impartial reviews of hearings in proposed §300.151. This provision makes clear, among other things, that a reviewing officer may remand a matter to the officer who conducted the hearing. It also relieves the reviewing officer of the burden of determining whether the hearing below met the requirements of due process in a case where he/she decides to conduct a *de novo* hearing. Taken together, the proposed amendments to the regulations concerning due process proceedings remove provisions that may be properly addressed by other levels of government and more clearly state the necessary Federal requirements.

QUESTION: ACCORDING TO YOUR PROPOSED REGULATION ON FINANCIAL RESPONSIBILITY FOR PROVIDING FREE APPROPRIATE PUBLIC EDUCATION, A LOCAL EDUCATIONAL AGENCY IS RELIEVED OF THE FINANCIAL RESPONSIBILITY FOR THE EDUCATION OF A HANDICAPPED CHILD IF ANOTHER AGENCY UNILATERALLY PLACES A CHILD IN A PARTICULAR SCHOOL OR FACILITY. HOW WILL THIS AFFECT CHILDREN PLACED IN A PARTICULAR SCHOOL BY A COURT OF LAW OR A MENTAL HEALTH AGENCY WHICH IS ACTING TO ENSURE THE RIGHTS OF EQUAL EDUCATIONAL OPPORTUNITY FOR THE HANDICAPPED CHILD BECAUSE THE LOCAL EDUCATIONAL AGENCY HAS FAILED TO DO SO?

RESPONSE: If a child is placed in a particular school or facility by a court, a mental health agency, or some other State agency because the local educational agency has failed to make needed services available to the child, the child is still entitled to a free appropriate public education (FAPE) at no cost to the child's parents. The proposed regulations continue to recognize the authority and responsibility of the State to determine which agency or agencies will bear the cost of providing FAPE. Section 300.111. State law might well require, for example, that the local educational agency remain financially responsible where the child's placement was made necessary because of the LEA's failure to provide needed services.

Where no State law or interagency agreement covers the matter, however, the proposed regulations, by clearly placing financial responsibility with the placing agency, would remove any uncertainty that could delay the provision of services. In any event, the State educational agency is ultimately responsible for ensuring that the requirements of the statute, including requirements relating to the availability of a free appropriate public education for each child, are met. 20 U.S.C. 1412(b).

QUESTION: IN ADDITION, THE PROPOSED REGULATIONS LIMIT THE RESPONSIBILITY TO THE STATE EDUCATIONAL AGENCY (SEA) TO INSURE THE RIGHTS AND PROTECTIONS OF CHILDREN PLACED IN PRIVATE SCHOOLS BY THE SEA. THIS IS A SUBSTANTIAL REVISION FROM THE CURRENT REGULATIONS WHICH WOULD INSURE THE HANDICAPPED CHILD'S RIGHTS NO MATTER WHAT PUBLIC AGENCY PLACES OR REFERS A CHILD FOR PRIVATE PLACEMENT. WHAT IS THE RATIONALE FOR THIS CHANGE? HOW DOES THIS CHANGE ASSURE EQUAL EDUCATIONAL OPPORTUNITY FOR HANDICAPPED CHILDREN?

RESPONSE: The proposed regulations do not alter the rights of a handicapped child placed in a private school or facility by a public agency as the means of meeting that agency's obligations under the statute. The requirements of the proposed regulations relating to children placed in private schools or facilities by public agencies are not limited to children placed by the State educational agency. Rather, the proposed regulations continue to require the State to ensure the statutory rights of children placed by any public agency. The language in the proposed regulations on this point (§300.130) is virtually identical to the language of the current §300.401.

QUESTION: *THE SECTION WHICH ALLOWS SCHOOLS TO SET "REASONABLE LIMITATIONS"* ON THE LEVEL, FREQUENCY AND DURATION OF THE RELATED SERVICES PROVIDED TO CHILDREN AND ON THE QUALIFICATIONS OF THE PROVIDERS OF THESE SERVICES:

BOTH PUBLIC LAW 94-142 AND SECTION 504 REQUIRE SCHOOL DISTRICTS TO PROVIDE EDUCATIONAL PROGRAMS TO CHILDREN WHICH ARE DESIGNED TO MEET THE CHILD'S INDIVIDUAL NEEDS.

IF A CHILD NEEDS PHYSICAL THERAPY SEVERAL TIMES DURING A WEEK BUT THE SCHOOL HAS LIMITED RESOURCES AND CAN PROVIDE A THERAPIST ONLY ONE TIME A MONTH, HOW WILL SCHOOLS MEET THEIR OBLIGATION TO PROVIDE THE CHILD WITH SERVICES TAILORED TO MEET HIS/HER INDIVIDUAL NEEDS? IS THIS PROVISION NOT, ON ITS FACE, A VIOLATION OF THE LETTER AND INTENT OF THESE LAWS?

IF THE SCHOOLS ARE ALLOWED TO SET LIMITATIONS ON THE QUALIFICATIONS OF THE PERSONNEL PROVIDING THOSE SERVICES, WHAT GUARANTEES DO PARENTS HAVE THAT SERVICES WON'T BE PROVIDED BY UNQUALIFIED PEOPLE? (IT IS THE EXPERIENCE OF MANY PARENTS THAT, EVEN UNDER EXISTING REGULATIONS, PHYSICAL THERAPY SERVICES ARE OFTEN PERFORMED BY CLASSROOM TEACHERS WHO ARE OFTEN UNEXPERIENCED AND UNKNOWLEDGEABLE ABOUT THERAPY).

RESPONSE: The educational agency could not rely upon proposed §300.4(b)(10)(ii), which permits agencies to establish reasonable limitations on related services, in offering to provide a child physical therapy once a month where the service was required several times a week to assist the child to benefit from special education.

The Department does not believe the provision will adversely affect the availability of necessary services at the local level. Nor does the provision state a novel principle. Many public agencies already have guidelines for establishing the frequency and duration of speech pathology sessions, for example. Some agencies routinely arrange for such services as physical and occupational therapy at specific locations. Parents and agencies appear to be able to make the judgments contemplated by the proposed rule within the framework of the procedures established by the statute. In the event of a dispute that could not be resolved in the development of a child's I.E.P., a parent would continue to be able to initiate a due process hearing to challenge the limitation on the service. Unless the proffered service provided educational benefits that were substantially the same as required services without the limitation, the limitation could not be squared with the proposed regulation.

With respect to the second part of the question, the proposed regulations require that related services be provided by qualified providers. The proposed language allows an agency to establish reasonable limitations relating to, among other things -- "(B) The qualifications of the providers of [required] services, where those services are available from more than one qualified provider" (emphasis added).

QUESTION: IN SECTION 300.85 (PROHIBITION AGAINST SUPPLANTING) OF THE REVISED REGULATIONS, (c)(2) LISTS "OTHER EXTRAORDINARY, NONRECURRING EXPENDITURES" AS AN "ALLOWANCE" FOR THE LOCAL EDUCATIONAL AGENCY WHEN IT COMPUTES ITS EXPENDITURE FOR HANDICAPPED CHILDREN. PLEASE EXPLAIN THE INTENT OF THIS PROVISION...AND WHY IT WAS ADDED IN THESE REVISED REGULATIONS.

RESPONSE: Under current regulations relating to the prohibition on supplanting, an "allowance" may be made for, among other things, "unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities." Current §300.230(b)(1)(ii). The purpose of this provision is to ensure that local educational agencies (LEAs) will not be inhibited by the prohibition on supplanting from making capital improvements and other special expenditures on behalf of handicapped children. However, this important objective is not fully achieved by the current regulations because of the limitation to long-term purposes. It is also possible that an LEA might be inhibited from making certain extraordinary short-term expenditures for fear that it would be permanently bound by the supplanting prohibition to continue to spend at least at that level. As an example, a small school district might need to pay for a high-cost residential placement for one or two children in order to provide them a free appropriate public education. The Department does not believe that the supplanting prohibition was intended to require the district to continue this high level of expenditures after those placements are no longer necessary. Therefore, the proposed regulations expand the category of expenditures for which an allowance may be made to include extraordinary, nonrecurring expenditures.

The Department does not believe that this expanded provision will be abused. First, the Department has received no reports of abuse under the current provision which permits an allowance to be made for certain long-term expenditures. Second, the State educational agency, which would determine initially whether an allowance was warranted, remains responsible for ensuring the compliance of all LEAs with the supplanting prohibition through the review of LEA applications and monitoring and enforcement activities. See proposed §§300.35(a), 300.74, 300.85(a), 300.170(c). Third, the Department will continue to monitor States to ensure that they are properly complying with and enforcing the supplanting prohibition.

QUESTION: DURING THE 1980 HEARINGS, AN ISSUE OF CONCERN TO STATE ADMINISTRATORS WAS THE REQUIREMENT RELATING TO THE STATE EDUCATION AGENCY'S RESPONSIBILITY THAT ALL EDUCATIONAL PROGRAMS BE UNDER THE GENERAL SUPERVISION OF THE SEA AND MEET THE EDUCATIONAL REQUIREMENTS OF THE STATE. WITNESSES TESTIFIED THAT GUIDANCE FROM DOE WOULD BE VERY HELPFUL ON THIS ISSUE. HOWEVER, YOUR SEPTEMBER 1, 1981 ISSUES PAPER DID NOT HIGHLIGHT THIS SEA RESPONSIBILITY AS AN ISSUE AND YOUR REVISED REGULATIONS DO NOT APPEAR TO PROVIDE GUIDANCE. HOW DO YOU VIEW THE REVISED REGULATIONS AS ADDRESSING THIS SEA CONCERN DISCUSSED IN THE HEARINGS OF THE SUBCOMMITTEE ON THE HANDICAPPED THAT YEAR?

RESPONSE: As reported in the Department's Fourth Annual Report to Congress on the Implementation of P.L. 94-142 (1982), various studies indicate that States have continued to improve their administration of educational programs and services for handicapped children. Monitoring conducted by Special Education Programs (SEP) during 1980-81 confirmed that significant progress had been made in the States visited in establishing SEA authority for general supervision and in initiating a process for monitoring public agency programs for handicapped children.

Despite these advances, however, a special study by Education TURNKEY reports that LEAs are still faced with State and local legal and regulatory barriers which interfere with interagency collaboration. SEP monitoring efforts confirm this report. The proposed regulations seek to address this issue by proposing minimal Federal regulations that will give States flexibility in examining and modifying, if necessary, existing State laws and regulations to eliminate these barriers and to undertake the necessary initiatives to implement the statutory requirement.

The proposed regulations do not prescribe specific State practices other than requiring such written agreements as State agencies determine are necessary to carry out the statutory requirements concerning the SEA's responsibilities. See proposed §300.170(b).

QUESTION: PUBLIC LAW 94-142 MANDATES THAT ALL HANDICAPPED CHILDREN HAVE AVAILABLE A FREE APPROPRIATE PUBLIC EDUCATION WHICH INCLUDES SPECIAL EDUCATION AND RELATED SERVICES. THE REVISED REGULATIONS SAY THAT AN AGENCY CAN IMPOSE "REASONABLE LIMITATIONS" ON THE LEVEL, FREQUENCY, AND DURATION OF THE SERVICES, QUALIFICATIONS OF PROVIDERS, ETC. DOES THIS REASONABLE LIMITATION PROVISION MEAN THAT THIS ADMINISTRATION IS ADVOCATING ONLY MINIMAL SERVICES WHEN IN FACT THE LAW IS INTENDED TO MEET THE "UNIQUE NEEDS" OF A HANDICAPPED CHILD?

RESPONSE: No. This Administration advocates carrying out the statute in accordance with its terms. The provision to which the question relates, proposed §300.4(b)(10)(ii), states:

> In determining whether a service is required to assist a handicapped child to benefit from special education, in developing the child's individualized education program, a public agency is not precluded from establishing reasonable limitations relating to [the stated factors].

The intention is not to alter the individualized determination of services that are required to assist the child to benefit from special education. Nor does the proposed provision sanction only minimal services. The purpose of the provision is to permit educational agencies, in the context of the I.E.P. meeting in which parents are full participants, to set limits on the provision of related services where alternatives would not substantially increase the educational benefit to the child.

The Department does not believe the provision concerning reasonable limitations for related services will adversely affect the availability of necessary services at the local level. Nor does it state a novel principle. Many public agencies already have guidelines for establishing the frequency and duration of speech pathology sessions, for example. Some agencies routinely arrange for such services as physical and occupational therapy to be provided at specific locations. Current Departmental guidance, in a comment following §300.13 of the existing regulations, contemplates that particular services might be provided by one of several qualified providers. Parents and agencies appear to be able to make the judgments contemplated by the proposed rule within the framework of the procedures established by the statute.

QUESTION: SECTION 300.100(b) INDICATES THAT IF A STATE'S GRANT IS EQUAL TO OR LESS THAN $1,200,000, IT MAY USE UP TO THE FULL 25% OF THAT GRANT FOR ADMINISTRATIVE COSTS. THE LAW STATES THAT A STATE MAY USE 5% OR $300,000, WHICHEVER IS GREATER, FOR ADMINISTRATIVE COSTS RELATED TO CARRYING OUT 612 and 613, AND THAT THE REMAINDER OF THE STATE'S SETASIDE (25% OF THE TOTAL GRANT) IS TO BE USED FOR SUPPORT SERVICES AND DIRECT SERVICES. PLEASE EXPLAIN THIS NEW INTERPRETATION.

RESPONSE: The Department does not regard proposed §300.100(b) as a change from current regulations. Rather, it provides clarification on a point that the current regulations do not adequately address, namely the amount of the State's grant that the State may spend on administrative costs in those few cases where the amount of the State's set-aside is greater than 5% of the State's total grant, but is less than $300,000. As is explained below, this will be the case only where the State's total grant is less than $1.2 million.

Under Section 611(c)(1)(A) of the statute, a State may retain up to 25% of the total award to the State, and must allocate the remainder (i.e., not less than 75%) to local educational agencies and intermediate educational units. Of the amount retained by the State, it may use up to either 5% of the State's total award (i.e., up to one-fifth of the amount it may retain) or $300,000 whichever is greater, for administrative costs. Section 611(c)(2)(i). Any funds remaining from the State's set-aside are to be used by the State for support services and direct services. Section 611(c)(2)(ii).

When a State's total grant is less than $6 million, $300,000 will always be greater than 5% of the State's total grant. (5% of $6 million is $300,000.) In those cases, then, $300,000 will be the applicable limit, rather than the 5% figure. Such a State could spend up to $300,000 of its set-aside for administrative costs, even though this may constitute the entire amount of the set-aside.

In some cases, however, $300,000 is, in fact, greater than the 25% of the State's total grant that it may retain. This will be the case whenever the State's total grant is less than $1.2 million. (25% of 1.2 million is $300,000). Since it would be impossible for the State to spend $300,000 of its set-aside when the set-aside is less than that amount, the regulation simply provides that in such a case the State may use the full set-aside, whatever the amount, for administrative costs.

QUESTION: WITNESSES AT THE CONGRESSIONAL OVERSIGHT HEARINGS ALSO TESTIFIED THAT "THE MANDATES OF P.L. 94-142, HOWEVER, HAVE RESULTED IN STATE AGENCIES ASSUMING THE RESPONSIBILITY FOR SERVICES PREVIOUSLY PROVIDED BY OTHER AGENCIES WHEN DIFFICULTIES ARISE IN INTER-AGENCY COOPERATION" (JOINT TESTIMONY OF COUNCIL OF CHIEF STATE SCHOOL OFFICERS AND NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION, MARCH 3, 1980). THE REVISED REGULATIONS DO NOT APPEAR TO ADDRESS THIS CONCERN AT ALL. PLEASE COMMENT.

RESPONSE: The statute requires that the State educational agency be responsible for all educational programs for handicapped children within the State, including programs administered by any other State or local agency. In order to allow State and local agencies the maximum flexibility to work within their existing laws and arrangements with other agencies, the proposed regulations do not expand on the statute. Confusion seems to occur when a particular service, usually provided by an agency other than the LEA, IEU, or SEA, is included in a child's IEP. The inclusion of any given service in an IEP does not automatically constitute an obligation that the educational agency provide and pay for such a service. The obligation is that the State ensure the provision of such services. Inclusion of a service in a child's IEP does not relieve any other State agency of its responsibility. For example, if a child is eligible for agency services under the Social Security Act, Title XIX, provided by an Intermediate Care Facility, the inclusion of a related service in a child's IEP would not necessarily relieve the Title XIX agency of its obligation to provide the service. The State obligation to provide the service could be met through Title XIX, an educational agency, or any other provider, so long as there was no cost to the parent.

QUESTION: ONE OF THE GAO'S RECOMMENDATIONS AT THE 1980 HEARINGS WAS THAT THE SECRETARY "REVISE THE PROGRAM REGULATIONS TO STATE CLEARLY THAT IEPS MUST INCLUDE ALL SPECIAL EDUCATION AND RELATED SERVICES NEEDED TO PROVIDE A FREE APPROPRIATE PUBLIC EDUCATION." PLEASE EXPLAIN IN WHAT WAY THE REVISED REGULATIONS ADDRESS THIS CONCERN, PARTICULARLY WHEN CONSIDERED IN CONJUNCTION WITH THE REVISED REGULATIONS "REASONABLE LIMITATIONS" LANGUAGE RELATING TO THE LEVEL, FREQUENCY AND DURATION OF SERVICES, QUALIFICATIONS OF PROVIDERS, ETC.

RESPONSE: Section 300.126 of the proposed regulations is essentially the same as §300.346 of the existing regulations. Both sections specify the content of the individualized education program (IEP) developed for each handicapped child, and explicitly require that each IEP include a statement of the specific special education and related services to be provided to the child. The proposed regulations do not include the specific statement recommended by GAO because this requirement is explained in a detailed interpretation of IEP requirements that was published in the *Federal Register* in January, 1981 (46 FR 5460-5474). The IEP interpretation includes the following question under §300.346 of the current regulation:

> Question 44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?
>
> Answer. Each public agency must provide a free appropriate public education to all handicapped children under its jurisdiction. Therefore, the IEP for a handicapped child must include all of the specific special education and related services needed by the child - as determined by the child's current evaluation. This means that the services must be listed in the IEP even if they are not directly available from the local agency, and must be provided by the agency through contract or other arrangements.

The interpretation, including Question 44, is currently in-effect. Although some adjustments may be made in the interpretation to reflect any changes in the final amended regulations, no change in this particular statement is expected. In its report of February 5, 1981, the GAO indicated that the promulgation of this policy interpretation adequately met its concerns. In accordance with the statutory requirement for a free appropriate public education, each handicapped child will still receive the related services required to assist the child to benefit from special education, notwithstanding the "reasonable limitation" provision. The related services to be provided to the child must be included in the child's IEP.

QUESTION: SECTION 300.114 (DISCIPLINARY RULES AND PROCEDURES) APPEARS TO ASSUME THAT THE 16,000 SCHOOL DISTRICTS IN THIS NATION HAVE WELL ESTABLISHED DISCIPLINARY PROCEDURES AND POLICIES RELATING TO HANDICAPPED CHILDREN. COULD YOU PLEASE PROVIDE INFORMATION ON THE NUMBER OF STATES AND SCHOOL DISTRICTS WHERE A LAW OR AGENCY POLICY IS IN EFFECT REGARDING THE REQUIREMENT OF HEARINGS BEFORE IMPOSING A DISCIPLINARY SANCTION ON HANDICAPPED CHILDREN.

RESPONSE: Section 300.114 of the proposed regulations is based on the premise that school districts have disciplinary policies and procedures that are applicable to all students. It is also presumed that these policies and procedures are consistent with the standards for the suspension or expulsion of students established by the Supreme Court in Goss v. Lopez, 419 U.S. 565 (1975). Thus, the focus of this section is on the applicability of a school district's normal disciplinary policies and procedures to handicapped children.

As of June, 1980, all States participating in the EHA-B program, with the exception of the District of Columbia and Delaware, had statutory authority to suspend or expel students. A few States (and some local school districts) are operating, like the District of Columbia, under court orders or consent decrees which either prohibit expulsions of handicapped students or require the use of specified procedural safeguards prior to suspending or expelling a handicapped student. Approximately five States specify restrictions on the application of State disciplinary authority to handicapped children.

QUESTION: WITH REGARD TO 300.161 (c)(2), REGARDING A HANDICAPPED CHILD'S "DISRUPTION" OF A CLASS AS A CRITERIA DURING CONSIDERATION OF PLACEMENT, PLEASE PROVIDE DOCUMENTATION ON THE EXTENT OF THIS "PROBLEM" THAT LED TO INCLUSION OF THIS PROVISION.

RESPONSE: There are no judicial decisions which have comprehensively addressed the application of the mainstreaming requirement as it relates to the effect of a handicapped child's placement on the education of other children. However, in cases involving sanctions for disruptive behavior of handicapped children, courts have acknowledged the relevance of the needs of other children.

In Stuart v. Nappi, 443 F. Supp. 1235 (D. Conn. 1978), the court held that a school cannot use an expulsion proceeding to change the educational placement of a handicapped child, but noted that "[h]andicapped children...are [not]...entitled to participate in programs when their behavior impairs the education of other children in the program." 443 F. Supp. at 1243. Another district court, in holding that a handicapped child who had been suspended from school was not entitled to a preliminary injunction against the suspension, noted that the statutory obligation to place handicapped children in regular classrooms must be balanced against the need to maintain order in the educational environment. Stanley v. School Administrative Unit No. 40 for Milford, 3 EHLR 552:390, 396 (D.N.H. 1980). See also, Blue v. New Haven Board of Education, 3 EHLR 552:401, 406 (D. Conn. 1981).

Proposed §300.161(c)(2) allows an agency, in determining whether a handicapped child should be placed in regular classes, to consider a substantial and clearly ascertainable disruption of educational services to other children in the same classes. The guideline following that paragraph states:

> Guideline: Paragraph (c)(2) is a narrow provision to be applied only in very limited circumstances. Placement of a handicapped child outside a regular class is not warranted, for example, where any adverse effect on other children is speculative in nature, or relates only to isolated incidents of disruption. Rather, an adverse effect on other children is grounds for such a placement only where the handicapped child exhibits specific behaviors that would clearly and substantially disrupt their educational services.

The Department thinks these provisions, read together, are useful in clarifying commentary on the least restrictive environment found in current regulations so as to prevent the improper exclusion of handicapped children from regular classes. We have not, however, conducted any formal data gathering studies on this question. A comment following current §300.513 quotes with approval the Appendix to the Department's regulations under Section 504 of the Rehabilitation Act of 1973: "Where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs" (emphasis added). Current regulations do not elaborate on how a determination that the education of other students was "significantly impaired" should be made.

By setting forth a strict regulatory standard for when the disruption of other children's education may be considered, and by describing the limited circumstances intended to be encompassed by the standard, the Department has provided a clarification that will benefit both handicapped children and educational agencies. This clarification is fully in accord with expressions of Congress's intent in enacting the least restrictive environment, or mainstreaming, provisions, and with judicial precedent.

QUESTION: DELETION OF THE REQUIREMENT FOR THE AVAILABILITY FOR A "CONTINUUM" OF AVAILABLE PLACEMENTS WOULD APPEAR TO HAVE ANOTHER EFFECT FROM THAT STATED IN SECRETARY BELL'S STATEMENT. THIS REVISED REGULATION MAY ENCOURAGE PLACEMENT IN EITHER A SEPARATE CLASS OR INSTITUTION OR IN A REGULAR CLASS WITH NO SUPPLEMENTARY SERVICES AND MAY RESULT IN NOT MEETING THE INDIVIDUAL NEEDS OF THE HANDICAPPED CHILD. WOULD YOU COMMENT, PLEASE.

RESPONSE: The Department has deleted the requirement that each school district maintain a "continuum of alternative placements" because this provision may have worked to encourage placement in a more restrictive environment simply because the more restrictive alternatives were in place. The continuum concept, as commonly defined in the special education literature, includes the development of separate classes, separate schools, and residential placements. Once such alternatives are developed, they tend to be used, even if the child's needs do not require such a restrictive placement. The Department believes that under the proposed regulations, agencies will continue to place students in a variety of alternative placements, but the placement decisions will be more individualized.

QUESTION: ONE OF THE ISSUES THAT EMERGED DURING THE 1980 HEARINGS WAS THAT CONCERNING THE DELAY BETWEEN REFERRAL FOR EVALUATION AND EVALUATION. THESE REGULATIONS DO NOT ADEQUATELY ADDRESS THE PROBLEM. PLEASE EXPLAIN WHY.

RESPONSE: The current regulations do not establish any timelines for the interval between a child's identification and evaluation. Section 300.18(b) of the proposed regulations does address the problem by requiring States to establish reasonable timelines for the interval between identification and evaluation, and to include those timelines in the State plan, thus subjecting them to public comment and Departmental review and approval. Twenty-seven States have already established such timelines, but studies have shown that students are not always evaluated in a timely manner, and are thereby effectively denied access to special education. By adding proposed § 300.18(b) to the regulations, the Department has provided a means of ensuring more effective performance by State agencies in this area.

QUESTION: THE SUBCOMMITTEE ON THE HANDICAPPED'S HEARING RECORD INDICATES THAT NOT SPECIFYING AN INTERVAL BETWEEN REFERRAL FOR EVALUATION AND EVALUATION HAS RESULTED IN SOME HANDICAPPED CHILDREN NOT BEING EVALUATED IN A TIMELY FASHION. WHY DO THE REVISED REGULATIONS REMOVE THE REQUIREMENT THAT NO MORE THAN 30 DAYS ELAPSE BETWEEN EVALUATION AND THE ESTABLISHMENT OF AN IEP?

RESPONSE: This question addresses two separate intervals - the first between identification and evaluation, the second between evaluation and the establishment of an IEP.

Section 300.18(b) of the proposed regulations requires each State to establish reasonable timelines between identification and evaluation, and to include those timelines in the State plan (thus subjecting it to public comment and Departmental review and approval). Requiring these timelines should help reduce the number of children on waiting lists for evaluations, and would ensure that the twenty-seven (27) States without such timelines would establish them.

In reference to the second interval, §300.20(b) of the proposed regulations requires each State to establish reasonable timelines for the interval between evaluation and the establishment of an IEP. These timelines are also subject to public comment and Departmental review and approval. Because timelines would take account of the individual circumstances in each State, the Department believes they are likely to be more effective than a single set of timelines established at the Federal level. Nevertheless, we welcome public comment on how best to ensure the prompt evaluation and placement of handicapped children.

QUESTION: GIVEN OUR CONCERN WITH THE APPROPRIATE EVALUATION OF HANDICAPPED CHILDREN, WHAT IS THE RATIONALE FOR CHANGING THE REQUIREMENT FOR MULTI-DISCIPLINARY ASSESSMENT OF ALL CHILDREN?

RESPONSE: The proposed regulations continue to require multidisciplinary evaluations for all children suspected of having severe, multiple, or complex disorders, including a specific learning disability. Moreover, proposed §300.158(g)(1) requires that each child's evaluation be sufficiently comprehensive to diagnose and appraise the child's suspected impairment. As suggested in a comment in the current regulations, in many cases a full array of professionals is not needed to diagnose a child's impairment. For example, most speech-impaired children can be appropriately assessed by a speech-language pathologist, who would refer the child to other specialists for further evaluation, as required. However, it may well be necessary to involve professionals from several disciplines at some point in a child's evaluation to ensure that the "comprehensive assessment" requirement will be met.

QUESTION: WILL THE REDUCTION IN LRE REGULATIONS CHANGE THE CURRENT SERVICE DELIVERY SYSTEM ACROSS THE COUNTRY? HOW WILL THE CHANGE AFFECT PLACEMENT DECISIONS?

RESPONSE: The proposed regulations reaffirm the basic LRE tenets of P.L. 94-142 that handicaped children are to be educated with nonhandicapped children to the maximum extent appropriate and that the removal of handicapped children from the regular educational environment is only to occur when education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The requirement in the current regulations that a continuum of alternative placements be available has been deleted from the proposed regulations. This requirement, which does not appear in the statute, often worked against the individual placement of handicapped children. SEP's monitoring found that school districts developed a range of placement alternatives, but that particular placement alternatives became "the placements" for particular types of handicapping conditions. The removal of the requirement for the establishment of a continuum of alternative placements does not alter the LEA's responsibility to provide an appropriate placement for each handicapped child even if that placement is not available within the jurisdiction of the agency.

A guideline in the proposed regulations sets a clearcut and narrow standard for defining disruptive behavior. Monitoring visits and special studies show that students are currently being excluded from certain placements for behavioral reasons, and that disruptive behavior is sometimes very broadly defined. The guideline in the proposed regulations makes it clear that before a student can be excluded from a particular placement, the disruptive behavior must be serious, is not to be speculative in nature, and should not apply to isolated behavioral incidents.

QUESTION: EACH YEAR THE DEPARTMENT OF EDUCATION TRANSMITS TO CONGRESS A REPORT ON THE PROGRESS TOWARDS IMPLEMENTATION OF P.L. 94-142. IF DATA REQUIREMENTS AND DOCUMENTATION ARE ELIMINATED FROM STATE PLANS, HOW WILL THE DEPARTMENT DETERMINE THE UNIVERSAL NEEDS FOR SPECIAL EDUCATORS AND TRAINING? IN ADDITION, HOW WILL THE OFFICE OF SPECIAL EDUCATION MONITOR HOW EFFECTIVELY FEDERAL DOLLARS ARE BEING UTILIZED TO EDUCATE OUR HANDICAPPED CHILDREN WITHOUT ADEQUATE DATA TO DETERMINE COMPLIANCE WITH THE LAW?

RESPONSE: The proposed regulations do remove requirements for including detailed information in State plans and, instead, allow States to determine how best to provide the required information. However, the elimination of these requirements does not affect the Department's ability to provide the Congress with the information required under Section 618 of the Act.

These data originally were obtained each year from the annual State plan, even though the statute did not require States to submit data in this fashion. Subsequently, the requirement to submit an annual plan was changed to submission once every three years. This meant that the State plan was no longer suitable for providing data that were needed annually. At that point, these data requirements were shifted to the annual performance report. Further improvements are being made for the 1983 reports when all data requirements, including child counts, are shifted to an annual data report. The proposed regulations conform to what has become the agency practice with regard to data acquisition. These regulations will not inhibit the Department's ability to gather adequate data to monitor how effectively Federal dollars are used to educate handicapped children. Furthermore, data on personnel needs will continue to be gathered as required by Section 618 of the Act.

QUESTION: THE PROPOSED REGULATIONS MODIFY CURRENT REQUIREMENTS TO AVOID DUPLICATION WITH THE PROVISIONS INCLUDED IN EDGAR (EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS) AND GEPA (GENERAL EDUCATION PROVISIONS ACT). IF IN THE FUTURE EITHER THE CURRENT EDGAR OR GEPA WERE SUBSTANTIALLY REVISED, WOULD WE HAVE TO AGAIN REVIEW THE PART B REGULATIONS? COULD WE NOT AVOID THIS INEFFICIENT USE OF CONGRESSIONAL AND EXECUTIVE BRANCH TIME BY JUST ALLOWING DUPLICATION IN THE CODE AND PART B REGULATIONS?

RESPONSE: The General Education Provisions Act (GEPA) and the Education Department General Administrative Regulations (EDGAR) both apply to the EHA-B program. Should either the GEPA or the EDGAR be amended, it would, therefore, be necessary to determine what the consequences of those changes would be to the EHA-B program, and to decide what changes, if any, would then be necessary in the Part B regulations.

With respect to the GEPA, this would be the case whether or not all the applicable requirements of that statute were duplicated in the Part B regulations. Since the Department is not free to alter the GEPA'a applicability or its substantive provisions, any changes in that statute would necessarily result in a review of all regulations subject to that statute, including the Part B regulations.

With respect to the EDGAR, the Department has determined that it is significantly more efficient, particularly for those individuals, agencies, and organizations interested in more than one ED program, to set out uniform provisions for several programs in one set of regulations (EDGAR) than to amend dozens of individual program regulations. The Department believes that the difficulties involved in referring to an additional set of regulations in order to find all the provisions applicable to an individual program are more than outweighed by the convenience of consolidating provisions common to numerous programs in one regulation. Where it is preferable for the regulations for a particular program to depart from the standard EDGAR provisions, the Department has found that that can be done with relatively little confusion or inconvenience to readers.

QUESTION: YOUR DEPARTMENT HAS CONTINUALLY PROPOSED A CONSOLIDATION OF PROGRAMS. IF THESE PROPOSED REGULATIONS BECOME FINAL AND ARE IMPLEMENTED, WILL PART B REGULATIONS NEED TO BE REVISED AGAIN IN ORDER TO BE APPLICABLE UNDER SUCH A CONSOLIDATION?

RESPONSE: Any time an authorizing statute is amended, the implementing regulations must be reviewed for revisions that may be necessary to conform the regulations to statutory changes. Therefore, if Congress enacts legislation to consolidate the State Grant and Preschool Incentive Grants programs under the Education of the Handicapped Act and the Chapter I State Agency Handicapped program under the Education Consolidation and Improvement Act, regulations under all three programs would have to be revised to implement the statutory amendments.

QUESTION: EVEN THOUGH THE CURRENT REGULATIONS TO P.L. 94-142 ARE CONSIDERED TO BE TOO STRICT, SCHOOL DISTRICTS HAVE HAD PROBLEMS INTERPRETING THE LAW AND HAVE BEEN INVOLVED IN NUMEROUS COURT CASES. HOW WILL MAKING THE REGULATIONS MORE GENERAL IMPROVE THE SITUATION IF THEY ARE TOO AMBIGUOUS NOW?

RESPONSE: The Department, after extensive solicitation of public comment and careful study, has proposed changes that are designed to reduce unnecessary burden on public agencies and to provide them with more flexibility in carrying out the program. Special attention has been focused on eliminating excessive regulatory detail that results in the expenditure of time and resources on administrative activities. Regulatory guidance has been provided in areas such as disciplinary procedures and related services where the Department felt that regulation would help to reduce confusion and clarify the responsibilities of public agencies and the rights of parents and children. The Department believes that the proposed regulations, which adhere more closely to the statutory language, will be easier to understand and to implement. The increased flexibility resulting from the proposed changes is expected to benefit both children and educational agencies by improving the ability of agencies to address the needs of handicapped children more effectively.

QUESTION: MR. SECRETARY, IN THIS PROPOSAL YOU REPEATEDLY DELETE EXISTING REQUIREMENTS FOR PARENTAL CONSENT, CONSULTATION AND INVOLVEMENT IN THE EDUCATION OF HIS OR HER CHILD. YET THIS IS AN ADMINISTRATION THAT CONSTANTLY TALKS IN ITS RHETORIC OF THE NEED FOR "LOCAL CONTROL."

-- HOW DO YOU SQUARE YOUR RHETORIC WITH YOUR ACTION?

-- WHAT IS THE JUSTIFICATION FOR YOUR ACTION?

RESPONSE: The proposed regulations allow State and local educational agencies more control over the provision of special education and related services. This change is in keeping with the Administration's view that education is primarily a State and local responsibility, and that these agencies should have as much flexibility as possible in implementing the statutory requirements.

The statute does not contain any express requirement for parental consent prior to initial evaluation or initial placement in special education. Under Section 439(b) of the General Education Provisions Act (GEPA), commonly referred to as the Hatch Amendment, a student need not submit to psychiatric or psychological testing without prior parental consent if that testing is intended to reveal information that could be embarrassing. There is no need to reiterate a consent requirement relating to this type of testing in the proposed regulations. In addition, most States (84%) currently require parental consent prior to evaluation through State law or regulations. Statutory prior notice requirements remain in place, as do parental rights to a due process hearing in case of disagreement on the evaluation or placement of a child.

With regard to parental consent to an initial placement in special education, the "pendency" provision of the statute (20 U.S.C. 1415(e)(3)) operates as a consent requirement of sorts. If a parent objects to an agency's proposed initial placement and initiates a due process hearing, this provision requires that the child remain in the then current educational placement during the pendency of the proceedings in both the administrative and the judicial forums. See proposed §300.153.

QUESTION: YOUR PROPOSAL WOULD SIGNIFICANTLY INCREASE THE DECISION MAKING AUTHORITY OF STATE AND LOCAL OFFICIALS. YET THESE SAME OFFICIALS, BY IGNORING HANDICAPPED STUDENTS, FORCED THE FEDERAL GOVERNMENT TO INVOLVE ITSELF TO PROTECT THESE CHILDREN. WHY SHOULD WE NOW ALLOW THESE SAME OFFICIALS THIS INCREASED DISCRETION?

RESPONSE: The situation has changed dramatically for the better in the 7 years since P.L. 94-142 was enacted. During that period, the availability of a free appropriate public education for all handicapped children has become an ever-widening reality as the number of handicapped children being served has continued to grow.

The quality of the special educational services provided to handicapped children has also increased markedly since the Act was passed, as State and local governments have devoted substantially more resources to educating these children. There has been a remarkable increase since that time in the number of qualified teachers and other specially trained personnel directly involved in serving handicapped children. There has also been a continuing increase in the percentage of handicapped children being educated in the regular educational environment. The most recent information shows that that figure is about 68 percent of all handicapped children.

In short, State and local educational agencies have made great strides in meeting the purpose of P.L. 94-142, and have developed a great deal of expertise in meeting the Act's requirements. At this point, therefore, it is appropriate to reduce the extensive detail in which the Federal Government has regulated in this area, and to provide greater flexibility to those who are directly responsible for providing an appropriate education to handicapped children.

QUESTION: THE REDUCED PARENTAL INVOLVEMENT AND INCREASED LOCAL GOVERNMENT DISCRETION WILL EMPHASIZE THE NEED FOR AN ACTIVE FEDERAL OVERSIGHT OF THIS PROGRAM. HOWEVER THIS ADMINISTRATION SHOWED LITTLE COMMITMENT TO THE PROBLEMS OF HANDICAPPED STUDENTS WHEN IT ATTEMPTED TO CUT THE FUNDS FOR THE PROGRAM BY 25%. MOREOVER, THIS ADMINISTRATION WANTS TO ELIMINATE YOUR DEPARTMENT. IN LIGHT OF ALL THIS, WHY SHOULD WE BELIEVE THAT YOUR AGENCY WILL VIGOROUSLY PROTECT THE RIGHTS OF THE HANDICAPPED?

RESPONSE: The Administration is committed to protecting the right of all handicapped children to a free appropriate public education. The proposed regulations do not reduce parental involvement in the process envisioned by the statute. The overriding purpose of the proposed regulations is to improve that process by removing excessive regulatory detail that detracts from the process and inappropriately limits the discretion of State and local educational agencies in serving handicapped children. The Administration believes that the elimination of excessive paperwork requirements and administrative burden and the increased flexibility that will result from the proposed changes will benefit both children and educational agencies by improving the ability of agencies to address the needs of handicapped children.

The Department will fulfill its responsibility to protect the statutory rights of these children by continuing carefully to monitor State efforts and to enforce the requirements of P.L. 94-142 and the requirements set out in final regulations under that statute.

QUESTION: ARE THE REDUCTIONS IN MANDATED SERVICES, PARENTAL INVOLVEMENT AND FEDERAL ADMINISTRATION AN ATTEMPT TO SET THE STAGE FOR FURTHER FUTURE BUDGET CUTS FOR THIS PROGRAM?

RESPONSE: By adhering more closely to the statutory language, the proposed changes do not reduce the services mandated by the statute or parental involvement in the process created by the statute to ensure the availability of a free appropriate public education to handicapped children. The proposed changes are designed to eliminate unnecessary paperwork requirements and administrative burdens and to increase the flexibility of State and local educational agencies. Although the Secretary anticipates that the proposed changes will result in some cost savings to public agencies, the changes are not being proposed to justify budget cuts for the program. The overriding purpose of all of the proposed changes is to improve the delivery of services to handicapped children by removing excessive regulatory detail that detracts from the process established by the statute and inappropriately limits the flexibility of State and local agencies in addressing the needs of handicapped children.

QUESTION: WILL THE ADMINISTRATION TRY TO CUT THIS PROGRAM AGAIN NEXT YEAR?

RESPONSE: In developing its budget request for fiscal year 1984, the Administration will attempt to develop a budget that is designed to provide adequate assistance to State and local governments in meeting the needs of handicapped children and to meet the need for economic restraint during this period of economic recovery. No decisions have been made as to the proposed budget levels for programs for the handicapped for fiscal year 1984.

QUESTION: CURRENTLY THE LOCAL EDUCATIONAL AGENCY IS REQUIRED TO SUBMIT DETAILED AND SUBSTANTIVE INFORMATION CONCERNING ITS POLICIES AND PROCEDURES. THE CHANGE WOULD ALLOW THE LEA'S TO PROVIDE ASSURANCES. HOW WOULD THE FEDERAL GOVERNMENT BE ABLE TO MONITOR AND ISSUE REPORTS ON LEA COMPLIANCE?

RESPONSE: The statute assigns to the Secretary responsibility for measuring and evaluating the effectiveness of State efforts to assure the free appropriate public education of all handicapped children. Under both the current and the proposed regulations, States maintain the responsibility for reviewing and approving LEA applications and for monitoring and evaluating special education programs at the local level.

The SEA's role is specifically noted in the proposed regulations. Proposed §300.36 maintains the requirement for SEAs to have "procedures for evaluation at least annually of the effectiveness of programs in meeting the needs of handicapped children, including evaluation of IEPs."

Also, under §300.170 of the proposed regulations, the SEA is required to undertake the activities described in Part 76 of the Education Department General Administrative Regulations (EDGAR) with respect to monitoring and evaluating educational programs within the State to ensure compliance with the requirements of the statute and regulations.

For the most part, the information deleted by the proposed regulations from the State plan is currently maintained by the Department. Special Education Programs (SEP) continues to review and analyze information during the development of State profiles prior to on-site reviews, and during the on-site portions of its monitoring of SEAs. SEP further maintains the authority to request whatever information it believes necessary to verify State assurances, and will continue to gather much of the data deleted from the State plan from other sources, such as annual performance reports.

QUESTION: CURRENT REGULATIONS "REQUIRE ANNUAL PROGRAM PLANS TO CONTAIN A DETAILED TIMETABLE FOR ACCOMPLISHING THE GOAL OF PROVIDING FULL EDUCATION OPPORTUNITY." THE PROPOSED CHANGES SAY "EACH STATE PLAN MUST INCLUDE IN DETAIL THE POLICIES AND PROCEDURES WHICH THE STATE WILL UNDERTAKE, OR HAS UNDERTAKEN, TO INSURE THE STATE HAS A GOAL OF PROVIDING FULL EDUCATIONAL OPPORTUNITIES." IT SEEMS TO ME THAT THERE IS A GREAT DIFFERENCE IN "A TIMETABLE FOR ACCOMPLISHING THE GOAL" AND IN " HAVING A GOAL". PLEASE COMMENT ON THIS.

RESPONSE: Proposed §300.16(b) maintains the requirement that each State plan have "a detailed timetable for accomplishing the goal of providing full educational opportunity to all handicapped children." The proposed regulation further requires that the timetable included in the State plan state " the estimated numbers, by age range and disability categories, of handicapped children that the State expects to be receiving a full educational opportunity during each succeeding year in the period covered by the timetable."

QUESTION: WHY DID YOU INCLUDE A SECTION ON DISCIPLINE WHEN IT DOES NOT APPEAR IN THE CURRENT REGULATIONS OR LAW?

RESPONSE: A section on discipline is included in the proposed regulations as a means of resolving the persistent and recurring question of the relationship between the requirement of a free appropriate public education and a school's ordinary disciplinary rules and procedures and to correct misinterpretation of the EHA-B statute. The proposed regulations are included to ensure that (1) handicapped children are not subjected to the more serious school disciplinary sanctions (including long-term suspensions or expulsions) for behavior caused by their handicapping conditions, and (2) handicapped children are otherwise subject to the same disciplinary rules and procedures as are nonhandicapped children, especially for relatively minor sanctions. The proposed regulations include a provision that public agencies may not apply their disciplinary standards and procedures in a way that discriminates against handicapped children.

QUESTION: UNDER THE DEFINITION OF RELATED SERVICES IT STATES THAT "A PUBLIC AGENCY IS NOT PRECLUDED FROM ESTABLISHING REASONABLE LIMITATIONS RELATING TO THE LEVEL, FREQUENCY, AND DURATION OF THE SERVICES REQUIRED, THE QUALIFICATIONS OF THE PROVIDERS OF THOSE SERVICES."

DOES THIS MEAN THAT WHERE A SPEECH PATHOLOGIST IS REQUIRED THE SEA MAY USE A SPEECH THERAPIST?

RESPONSE: Proposed §300.4(b)(10)(ii) permits agencies to establish reasonable limitations relating to the qualifications of the providers of related services, "where services are available from more than one qualified provider." This provision should not significantly affect existing agency practice, but complements the new provision requiring States to describe their policies and procedures on related services. Many public agencies already have guidelines for establishing the frequency and duration of speech pathology sessions, for example. Some agencies routinely arrange for services such as physical and occupational therapy to be provided at specific locations. Current Departmental guidance, in a comment following §300.13 of the existing regulations, indicates that particular services might be provided by one of several qualified providers. Counseling services, for example, might be provided by social workers, psychologists, or guidance counselors.

Where the provision of speech pathology services is involved, the choice of providers would be limited to those persons who met the requirements established in that State for providing identification, evaluation, or remedial services to speech-impaired individuals.

QUESTION: PRESENTLY, A STATE IS REQUIRED TO SHOW DOCUMENTATION THAT THE STATE IS PROVIDING A FREE APPROPRIATE PUBLIC EDUCATION.

WHY WAS THIS PROVISION DELETED?

RESPONSE: Under proposed §300.15, a State must include in its plan information which shows that the State has in effect a policy which ensures that all handicapped children have the right to a free appropriate public education. This language is taken from the statute. 20 U.S.C. 1412(1). Proposed §300.11(c) permits a State to incorporate, by reference satisfactory to the Secretary, information on file with the Department, including previous State plans. Taken together, these provisions allow a State, if it has already submitted the required documentation in a prior approved plan, to rely on that information unless there is a significant change in its policies and procedures.

QUESTION: IN CURRENT LAW, THE TIME LINE BETWEEN EVALUATION AND THE ESTABLISHMENT OF THE INDIVIDUALIZED EDUCATION PROGRAM IS THIRTY DAYS. THIS PROVISION HAS BEEN DELETED AND THE WORDING "REASONABLE TIME LINES" HAS BEEN INSERTED.

WHAT IS THE RATIONALE FOR THIS CHANGE?

RESPONSE: The Department feels it would be an unwarranted Federal intrusion to set a nationwide standard for the completion of this step in the provision of services to handicapped children. The proposed regulations require States to establish reasonable timelines for conducting an IEP meeting after a child is evaluated. As part of the State plan, the timeline is subject to public comment and Departmental review and approval. This review process is more than adequate to ensure the protection of the rights of handicapped children as those rights might be affected by a State's adoption of timelines. Moreover, because timelines would take account of the individual circumstances in each State, the Department believes they are likely to be more effective than a single set of timelines established at the Federal level.

QUESTION: IN CURRENT LAW, THE TIME LINE BETWEEN EVALUATION AND THE ESTABLISHMENT OF THE INDIVIDUALIZED EDUCATION PROGRAM IS THIRTY DAYS. THIS PROVISION HAS BEEN DELETED AND THE WORDING "REASONABLE TIME LINES" HAS BEEN INSERTED.

WHAT DO YOU FEEL IS A REASONABLE TIME LIMIT?

RESPONSE: Proposed §300.18(b) requires that each State plan include "reasonable" timelines for the interval between the identification of a child as handicapped and the child's evaluation, in order "to ensure a prompt evaluation". Similarly, proposed §300.20(b) requires that each State plan include "reasonable" timelines for the interval between the evaluation of the child and the establishment of the child's IEP in order "to ensure the prompt establishment of an IEP".

The Secretary believes that reasonable timelines for evaluation and the establishment of an IEP are necessary to ensure that each child has available a free appropriate public education (FAPE), but that it is not necessary to establish at the Federal level specific nationwide timelines.

The statute does not set forth a nationwide standard for completion of this step. Although the current regulations impose a 30 day limit on the interval between a child's evaluation and development of an individualized education program (IEP), States and local districts (about a third of the total in a recent survey) had a timeline shorter than 30 days. At the same time, there are instances where more than 30 days is an appropriate period for developing an IEP. For example, it might be necessary to place a child in a program temporarily before the IEP is finalized, to aid in determining the most appropriate placement. In other instances, the Department may consider such factors as school districts with a large transient population, a high percentage of minority language problems, or certain other legitimate administrative reasons. However, the Department does not consider timelines of thirty days to be unreasonable, per se, and will look carefully at all requests to establish intervals in excess of thirty days. The Department's view is that a reasonable period is best determined in the first instance by levels of government closer to the performance of the job, taking into account the circumstances in each State.

It is with these factors in mind that the Department will review the reasonableness of the timelines included in State plans submitted for its approval. The timelines must provide sufficient opportunity to the affected agencies to conduct a thorough evaluation and to develop an IEP, based on that evaluation, that meets the child's unique needs, but they must also ensure that the IEP will be implemented as soon as the services required in it are required to meet the needs of the child.

QUESTION: WHY IS THE SPECIFIC CONTENT OF THE NOTICE USED TO INFORM PARENTS OF AN IEP MEETING DELETED.

RESPONSE: The content of the notice has become such a routine part of the IEP process in most public agencies that there is no longer any reason to specify content. Since the statute does not prescribe specific content for the notice and since current §300.345(b) specifies only very basic information (purpose, time, place), this change should not place parents at a disadvantage. The only real change is deleting the requirement that the notice indicate who will be in attendance.

QUESTION: WHY IS THE PROVISION FOR PARENTS TO RECEIVE A COPY OF THE IEP BEING DELETED?

RESPONSE: There has been no change in this requirement. Section 300.345(f) of the current regulations is carried over to the proposed regulations as §300.125(c). The proposed provision states, "The public agency shall give the parents, on request, a copy of the IEP."

QUESTION: IF THE SPECIFIC CONTENT OF NOTICE IS NOT RETAINED THEN HOW WILL THE LOCAL EDUCATION AGENCY BE ABLE TO JUSTIFY THE FACT THAT THEY DID TRY TO CONTACT THE PARENTS?

RESPONSE: Section 300.125 of the proposed regulations retains substantial requirements for parent participation. Even though requirements to document an agency's efforts to arrange a mutually agreed on time and place have been deleted, §300.125 still requires that each public agency take steps to ensure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate. The greater flexibility for State and local public agencies in developing, implementing and documenting procedures to respond to these general requirements does not diminish the agency's duty to make good faith, reasonable attempts to involve parents in the development of the IEP. Agencies may choose how they wish to show they made these attempts.

QUESTION: WHY WAS THE PROVISION FOR INFORMING PARENTS OF LOW-COST OR FREE LEGAL OR OTHER SERVICES DELETED?

RESPONSE: The requirement for informing parents of free or low-cost legal services is not found in the statute. Parents continue to have the right to legal counsel, but public agencies have no duty under the EHA-B statute to gather the information or to inform parents of where free or low cost legal services may be obtained.

QUESTION: WHY WAS THE PROHIBITION ON THE INTRODUCTION OF EVIDENCE THAT HAS NOT BEEN DISCLOSED TO EACH PARTY FIVE DAYS BEFORE A DUE PROCESS HEARING DELETED? SHOULD NOT ALL DATA BE AVAILABLE TO BOTH SIDES?

RESPONSE: Current §300.508(a)(3) authorizes a party to bar the introduction of evidence that was not disclosed to that party at least five days before the hearing. This provision is not found in the statute, and is not the only permissible or effective means of accomplishing its intended objective.

As explained in the guideline following proposed §300.149, States are free to specify evidentiary and other technical procedural requirements that relate to impartial hearings and reviews. The statute, at 20 U.S.C. 1415(b)(1), expressly provides that the procedures required by that section include, but are not limited to, the rights set out therein. Thus, States may adopt such procedures as they believe to be appropriate to govern the conduct of EHA-B due process proceedings, so long as those procedures are not inconsistent with Federal law. States may wish to continue the policy reflected in current §300.508(a)(3), or to adopt other safeguards against surprise and unfairness.

QUESTION: THE REQUIREMENT OF EDUCATION CLOSE TO THE CHILD'S HOME WHERE POSSIBLE WAS DELETED.

WHY?

RESPONSE: Consistent with the Department's attempt to rely upon the process established by the statute for determining the appropriate placement for a handicapped child, current provisions that impose requirements not found in the statute are deleted.

The requirement that placement be as close as possible to the child's home is not contained in the statute. Deleting this requirement will allow schools greater flexibility in providing services to handicapped students, particularly students with low incidence handicapping conditions, by allowing them to form larger planning bases for the delivery of services. With a larger planning base, LEAs can, in many instances, develop more appropriate, higher quality services. For example, districts can sometimes group the few severely handicapped students from across the district and place them in age-appropriate settings in regular school buildings.

QUESTION: DO YOU FEEL HANDICAPPED CHILDREN SHOULD BE BUSED LONG DISTANCES TO RECEIVE THEIR EDUCATION?

RESPONSE: Absolutely not. This administration is opposed to busing any child long distances, handicapped or nonhandicapped, for reasons unrelated to education, especially in opposition to the expressed wishes of the child's parents. The Department's decision to delete the requirements that placement be as close to home as possible and, except where the IEP requires otherwise, that the child be placed in the school the child would attend if not handicapped should in no way be construed as support for transporting handicapped children long distances to receive services. Rather, the decision is based upon an attempt to allow for larger planning bases in order to improve, in some instances, service delivery to handicapped children.

Deleting these requirements will allow schools greater flexibility in providing services to handicapped students, particularly students with low incidence handicapping conditions, by allowing them to form larger planning bases.

QUESTION: THE PROVISION RELATING TO THE DISRUPTION IN THE EDUCATION OF OTHER CHILDREN IN DETERMINING WHERE TO PLACE A HANDICAPPED CHILD SEEMS TO BE VERY GENERAL. WHAT IS THE DEFINITION OF DISRUPTIVE? WOULD A CEREBRAL PALSIED STUDENT WHO USES A COMMUNICATION BOARD BE CONSIDERED DISRUPTIVE TO OTHER STUDENTS IN THEIR CLASS?

RESPONSE: Proposed §300.161(c)(2) allows an agency, in determining whether a handicapped child should be placed in regular classes, to consider a substantial and clearly ascertainable disruption of educational services to other children in the same classes. The guideline following that paragraph states:

> Guideline. Paragraph (c)(2) is a narrow provision to be applied only in very limited circumstances. Placement of a handicapped child outside a regular class is not warranted, for example, where any adverse effect on other children is speculative in nature, or relates only to isolated incidents of disruption. Rather, an adverse effect on other children is grounds for such a placement only where the handicapped child exhibits specific behaviors that would clearly and substantially disrupt their educational services.

The Department thinks these provisions, read together, are useful in clarifying commentary on the least restrictive environment found in current regulations so as to prevent the improper exclusion of handicapped children from regular classes. A comment following current §300.513 quotes with approval the Appendix to the Department's regulations under Section 504 of the Rehabilitation Act of 1973: "Where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs" (emphasis added). Current regulations do not elaborate on how a determination that the education of other students is "significantly impaired" should be made.

By setting forth a strict regulatory standard for when the disruption of other children's education may be considered, and by describing the limited circumstances intended to be encompassed by the standard, the Department believes we have provided a clarification that will benefit both handicapped children and educational agencies.

The Department does not believe a cerebral palsied child's use of a communication board in any of the circumstances of which the Department is aware warrants placement outside the regular class under either the current or the proposed regulations.

QUESTION: WHY WAS THE NEED FOR PARENTAL CONSENT PRIOR TO THE INITIAL EVALUATION ELIMINATED?

RESPONSE: While the Administration is sympathetic to family involvement in the education of all children, the statute does not contain any express requirement for parental consent prior to initial evaluation in special education. Under Section 439(b) of the General Education Provisions Act (GEPA), commonly referred to as the Hatch Amendment, a student need not submit to psychiatric or pyschological testing without prior parental consent if that testing is intended to reveal information that could be embarrassing. There is no need to reiterate a consent requirement relating to this type of testing in the proposed regulations. In addition, most States (84%) currently require parental consent prior to evaluation through State law or regulations. Statutory prior notice requirements remain in place, as do parental rights to a due process hearing in case of disagreement on the evaluation of a child.

QUESTION: IN THE SECTION ON SEVERELY LEARNING DISABLED WHY WAS THE OBSERVATION OF THE CHILD AND THE WRITTEN REPORT DELETED?

RESPONSE: The classroom observation requirement and the specific requirements relating to the written report under current §§300.542 and 300.543 have not been shown to deter misclassification of children as learning disabled. Instead, in the proposed regulations, more emphasis has been placed on the criteria for determining if a child has a specific learning disability. Section 300.158 of the proposed regulations requires a comprehensive and multidisciplinary evaluation for all children suspected of having a specific learning disability. This requirement allows States to establish appropriate procedures for assessment and reporting. Our experience has been that the paperwork associated with the Federal reporting requirement is not justified, since some form of report on the assessment of any handicapped child is generally required by States.

QUESTION: HOW WILL THE ADDITION OF "LACK OF READINESS" AND "LACK OF MOTIVATION" HELP IN THE DETERMINATION OF A SEVERELY LEARNING DISABLED CHILD?

RESPONSE: According to our own data and that of the General Accounting Office (Report of September 1981) the nationwide count of learning disabled children has grown rapidly since the Federal regulations for the evaluation of learning disabled children were published in 1977. This group of handicapped children now represents 35% of all handicapped children counted. Congress, in the legislative history for P.L. 94-142 (House Report No. 94-332, p. 8 (1975)), expressed the concern that this category could be misused; it is the legislative history from which the proposed standards are drawn. Recent studies indicate that large numbers of nonhandicapped children have been classified as learning disabled.

The proposed regulations relating to the assessment of learning disabled children are designed to provide States with information which will help them more clearly to identify which children are not eligible to be considered handicapped because their learning problems are due primarily to lack of readiness, lack of motivation, or inappropriate instruction and are not the result of serious and identifiable conditions the Act was designed to reach. These regulations will also provide States the opportunity to establish diagnostic procedures to rule out maturational lags or attitudinal factors which cause learning problems, but which do not require the use of specially designed instructional procedures and methods necessary for children with psychoneurological learning disorders. The effect of the proposed regulations will be to ensure that services to learning disabled children will not be diminished by the inappropriate inclusion of nonhandicapped children under this category.

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United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

August 10, 1982

The Honorable Lowell Weicker
Chairman
Handicapped Subcommittee
10-B Russell Building
U.S. Senate
INSIDE MAIL

Dear Mr.Chairman:

Enclosed is testimony I would like submit for the record of the hearing you held today, August 10, on the regulations proposed by the Department of Education dealing with P.L. 94-142, the Education of the Handicapped Act.

Thank you for your assistance in this matter.

Sincerely,

Quentin N. Burdick, U.S.S.

## Testimony of Senator Quentin Burdick Submitted to the U.S. Senate Subcommittee on the Handicappped on Proposed Changes to P.L. 94-142 Regulations
## August 10, 1982

Mr. Chairman, I am pleased to have this opportunity to express my views on these regulations proposed by the Department of Education on P.L. 94-142, the Education For All Handicapped Children Act of 1975. This Act significantly increased the federal role in the education of the handicapped and represents a momentous step to increase the quality of all education in this country. Since 1975, the effects of P.L. 94-142 have been evident and have been characterized by significant achievements in education of the handicapped. I hope that this trend can be continued and accelerated.

I fully support the Administration's goals of simplifying the existing regulations and eliminating excessive and duplicative paperwork. This problem is probably the most common complaint I hear from those trying to administer this program. Although there are several good suggestions in these regulations that move toward this goal, I am concerned that the paperwork reduction is not as great as it could be, and, in some cases, that these proposals may just replace one batch of forms with another.

What concerns me even more, however, is that, in some cases, the rights of the handicapped children would be weakened if these proposals were to be implemented as currently written. Reduction of paperwork must not be allowed to interfere with the rights of handicapped children under the law, or with the need to involve parents and teachers in the decision-making process. While I can and do support regulatory reform where it facilitates the administration and understanding of the law, I cannot support those changes that undermine the basic guarantees of the law. I am genuinely concerned that some of these proposed regulations may jeopardize some of the basic guarantees of P.L. 94-142, and it is for this reason that I am voicing my concerns.

First of all, when striving to provide a "free appropriate public education" to handicapped children, we should strive to provide the best quality education. A handicapped child's education should not be inferior to that of a non-handicapped child. These regulations remove the language that requires the public agencies to take steps to: (1) insure that handicapped children have available those educational programs and services which are available to non-handicapped children; and (2) provide nonacademic and extracurricular services and activities to afford handicapped children an equal opportunity for participation. Without these requirements, the education of handicapped children would be weakened and its standards lowered.

Secondly, the proposed regulations delete the requirement that the meeting to establish an Individualized Education Program for each child be held within 30 days of a determination that a child needs special education. The period of this time constraint would be left up to the states. It is my fear that a state, for any number of reasons, could prolong the commencement of special education for a handicapped child. Our goal should be one of expediting special education delivery — not delaying it. While the 30-day provision may present special problems, deleting it without an appropriate replacement is not the proper solution.

The Department of Education also proposes to remove certain provisions which pertain to the involvement of parents in the evaluation and the planning of an Individualized Education Program for their child. Meaningful parent participation in his child's education is essential for optimizing the benefits and effectiveness of that education. Any changes which reduce a parent's participation must be critically scrutinized and questioned.

My final concern stems from the proposed elimination of certain provisions which state that a handicapped child should be placed in the least restrictive environment. The current provisions stipulate that handicapped children should be educated in the school he would normally attend, that he be placed as close as possible to his home, and that he participate in nonacademic services and activities to the maximum extent appropriate. These guidelines are commendable and should be retained for they conform both with the law and with the overall goal of providing the best quality education possible.

Mr. Chairman, I want to reiterate my feeling that regulatory reform is needed to streamline the administration of this Act. The reforms, however, must be crafted in such a way as to ease the burdens of state and local administrators without weakening the basic protections the law now affords to handicapped children and their families. While there are many good proposals contained here that will streamline the administration of P.L. 94-142, I would urge the Department to reexamine their proposals from the consumer's point of view. I think they will find that this approach, combined with the goal of streamlining and simplifying administration for state and local officials, will result in a fairer and more accurate interpretation of the law.

**THE UNIVERSITY OF KANSAS**

School of Education
Bailey Hall
Lawrence, Kansas 66045

August 11, 1982

John Doyle, Esquire
c/o Senator Lowell Weiker
Subcommittee on the Handicapped
U. S. Senate
Washington, DC 20510

Dear John:

Thank you very much for the opportunity to testify yesterday. Senator Weiker was very impressive, and you and Nina clearly did excellent staff work. I am particularly pleased that there were so many subcommittee members who supported him and us. Now the real work begins. I will work with Paul Marchand on more extensive testimony for the record. * Speaking of which, it is gratifying that the Policy Analysis of LRE that we did here will be part of the record. Footnotes will be forthcoming. You may recall I promised it for you at the HECSE meeting Phil Burke arranged in Dallas in the spring. For your use, I am also enclosing a chapter on defederalization that I wrote about a year ago. It is yours to use as you see fit.

You do very helpful work. Keep it up. Best regards.

Very truly yours,

Rud

H. Rutherford Turnbull, III
Chairman, Department of
Special Education

HRT,III:bb

cc: Paul Marchand

* An abbreviated version is attached, per Nina's request to Paul Marchand.

Rud

# Parents, Disabled Children, and Defederalization:

## Life on the Razor's Edge of Public Selfishness

By

H. Rutherford Turnbull, III
The University of Kansas

In J. A. Mulik & S. M. Pueschel (Eds.), Parent professional participation in developmental disability services: Foundation and prospects. Cambridge, MA: Ware Press, in press (1982).

# "Parents, Disabled Children, and Defederalization: Life on the Razor's Edge of Selfishness"

H. Rutherford Turnbull, III
Chairman, Department of Special Education
The University of Kansas

"Ideas are inherently dangerous because they deny human facts." John Fowles, The Ebony Tower.

## Introduction

At this writing, a crisis of major proportions looms before disabled people in the United States. The current debate about the federal budget and the "New Federalism" is not the crisis, only symptomatic of it. The true crisis is not even the future relationship of the federal government to disabled citizens. It is--one would have thought the issue to be beyond cavil--whether disabled citizens are expendable and whether the benefits of this rich country should go only to the most meritorious, where merit equates with intelligence or physical ability. The relationship is the pivot for the real debate and, as such, is worthy of careful scrutiny. Indeed there is no more propitious time than now to examine that relationship and its prospects. To fail to do so would be to concede that the relationship was ill conceived; it would be to acquiesce to vindictive injustice and to attempts to redefine the relationship.

I will analyze the relationship and argue that it must be maintained in the face of the immediate frontal attack upon it. I also will discuss the implications of defederalization, represented by federal budget cuts and the "New Federalism," for parents of disabled children. I will explain why and how the federal government is involved in the lives of disabled people, why the Administration elected in November, 1980, wants to sever the relationship, how it will try to do so, and the consequences for disabled people if it is successful. I also will point out several of the important issues facing parents of handicapped children if defederalization occurs. And I shall conclude by arguing that a crisis of values, not a crisis of government, is the underlying issue.

## Reasons for The Federal Relationship

There is a compelling reason for the direct federal-citizen relationship. Quite simply, it is that a disability is a distinction that makes difference in a person's life; it is a characteristic that justifies and even requires a special relationship of the federal government to handicapped citizens.

All too often, state and local governments have denied disabled citizens opportunities for education, employment, community residence, medical treatment, and other opportunities that nonhandicapped people take for granted. They have deprived them of their liberty through involuntary commitment when they have not been dangerous to themselves or others; sterilized them against their wishes or without legally sufficient consent when there was no medical or other evidence that warranted sterilization; subjected them to guardianship as adults (and thereby deprived them of legal power to control themselves or their property) despite no clear need for substitute decisionmaking; experimented on them without adequate consent or assurances that the experiments would have greater benefits than risks to them; subjected them to treatment whose efficacies are debatable; denied them treatment that would be beneficial to them solely because they were disabled; and kept them in settings (such as some institutions and nursing homes) where they are certain to come to harm. The consequence of state and local discrimination and mistreatment has been the creation of dual systems of law and second-class citizenships for disabled people (Turnbull, 1981; Burgdorf, 1980; Turnbull, 1979; Friedman, 1979; Kindred, 1976).

To protect disabled citizens and give them opportunities for independence, it has been necessary for the federal government to enter into a direct relationship with them, one that interposes itself between state and local governments and disabled citizens. Were it not for their handicaps and the ways in which state and local governments have treated them at law, they would not be able to lay such a compelling claim to the direct relationship. And because of their handicaps and a bitter state-local history and current discrimination, the relationship must be continued.

There are other reasons for the federal presence in disabled people's lives. An important one is that the federal government, because of federal taxing machanisms and rates, has the ability to provide financial aid to state and local governments to help them do those things that they wish to do but cannot afford to do as well as they might. Thus, through P.L. 94-142, the Education for All Handicapped Children Act, the federal government helps to underwrite a portion of the costs of educating disabled children, despite the fact that the states have taken it upon themselves to do that job as one of their constitutional duties and there is no federal constitutional obligation to do it. Likewise, neither the states nor the federal government have any constitutional obligations to provide housing or medical or other treatment to disabled citizens, but, when states created institutions for disabled people, the federal government helped defray some of the costs of programmatically acceptable institutional care through the Medicaid provisions of the Social Security program.

Another reason for the federal presence is to assure that state and local governments do not violate the federal constitutional or other legal rights of disabled citizens. It is a unique federal role to enforce the federal constitution; history reveals that state and local governments are not inclined to do so, principally because they are the violators (Turnbull, 1981; Burgdorf, 1980; Turnbull, 1979; Friedman, 1979; Kindred, 1976). Thus, until recently the United States Department of Justice has been significantly involved in lawsuits that seek to enforce a disabled person's right to treatment and against cruel and unusual punishment in institutions (Wyatt v. Stickney, 1972; N.Y.A.R.C. v. Carey, 1979).

The federal government also seeks to do those things for disabled people that states themselves either cannot or will not do. Consider, for example, the impact on the public health of a withdrawal of federal funds from health, mental health, and maternal and child health research. Federally sponsored research on prevention and amelioration is essential. If only one state were to make research efforts, it would not have the desired impact. Also, many states assign a low priority to research and focus largely on providing services. Thus, the federal government is involved in supporting research because the states cannot do it effectively.

A final reason for the federal presence relates to the fact that disabled citizens are, after all, citizens of the United States and should receive roughly comparable treatment and opportunities wherever they live. Thus, federal aid to education tends to make it possible for a disabled person to receive some form of education in any of the 50 states; vocational rehabilitation is available in all states; and federal enforcement of federal rights can be obtained anywhere in the country. The basic rights of federal citizenship should not be limited by state borders. The federal presence in the lives of disabled people enables them and their families to chose a state or locality of residence for reasons generally unrelated to extreme diversity of treatment based on disability.

## Nature of The Federal Relationship

The federal-citizen relationship is a direct one. That this is so is evidenced by four types of federal laws defining the relationship. First, the federal government grants disabled people rights to substantive benefits, such as the right to an appropriate education (P.L. 94-142, Education for All Handicapped Children Act, 1975) or the right to protection and services in isntitutions (Developmentally Disabled Assistance and Bill of Rights Act, 1975). Second, Congress enacts rights to be free from discrimination; Section 504 of the Rehabilitation Act (1973 Amendments) typifies this right. Third, it entitles disabled citizens to certain benefits, as through several titles of the Social Security Act. Finally, Congress passes enforcement legislation, designed to enable disabled citizens enforce their rights under other law; a good example is the procedural safeguards of the Education for All Handicapped Children Act (1975).

The present relationship of the federal government to disabled people takes five different forms. First, in order to help them cope with the extraordinary demands of handicaps, the federal government provides direct assistance to disabled people and their families as, for example, by the provisions of the Social Security Act granting financial aid to disabled people, social services for needy handicapped citizens, and medical-care assistance to income-eligible disabled people. Second, to discover ways of amoliorating or preventing handicaps, it performs a leadership role in research, model program demonstration, and training in areas of vital importance to disabled people; the National Institute of Health and the National Institute of Habilitation Research are but two examples of this role. Third, the federal government induces and assists states in adopting and maintaining such essential cost-effective and human state-local services as education, vocational training, and institutional and community housing. Next, the federal government assures disabled people that they will have rights to services; the Education for All Handicapped Children Act (1975) and the Developmentally Disabled Assistance and Bill of Rights Act (1975) illustrate this role. Finally, it assures disabled people that they will have the means to acquire and enoy their rights; to this end, Congress has established and funded the Legal Services Corporation and, under the Developmentally Disabled Assistance and Bill of Rights Act (1975), the "protection and advocacy" systems and state planning councils for developmentally disabled citizens.

## Reasons for Defederalization

Those who propose to extricate the federal government from the lives of disabled citizens have many reasons. The reasons and some answers are as follows:

1. There is no legitimate federal role in most human service programs. To the contrary, it will be answered, the federal government has many important roles: stimulating state and local governments and the private sector to provide services (education, social services, health care, institutional and group-home care); providing financial aid for those services; mandating certain standards of service; insuring through nondiscrimination laws such as Sec. 504 that services are provided nondiscriminatorily to qualified handicapped people; and providing training, research, and model program funds to develop services and adequate staff for the services.

2. State and local governments can do the jobs that the federal government was doing; they can even administer human service programs better than the federal government. In response, it should be noted that federal funding makes it possible for state and local governments to provide human services; before federal initiatives and funding became available, those governments did not provide many of those services or rendered only very inadequate ones. In addition, while some aspects of the federal programs could administered locally, many aspects cannot.

3. Decisions about governmental programs are rendered more accountable if they are made by the governments that are "closest" to the "people." Local accountability has not been the experience of disabled people; indeed, local administration of human services programs has produced discrimination of vast dimensions (Kindred, 1976).

4. Federal regulation of federally sponsored programs imposes "unncessary" burdens, which can be alleviated by deregulation. While some regulations relating to the fiscal and programmatic administration of federal programs may be removed without affecting the rights of

disabled people, other regulations--principally, those that implement rights--are indispersable if the federally sponsored programs are to achieve their purposes of aiding disabled people.

5. It simply costs too much to operate the federal government and human service programs, particularly the "entitlement" ones (such as Social Security). But to reduce the costs, which allegedly contribute to inflation, it is necessary to reduce federal financial contributions, eliminate some entitlement programs, tighten up on eligibility for other such programs, and otherwise minimize the federal role. Thus, the definition of "handicapped child" or "disabled person" under federal education and social security laws could be made more narrow, federal aid reduced, and federal regulations lightened. These cost-containment measures truly are costly, not economical, for, generally they will increase the dependency of disabled people, not their independency, making it more expensive to everyone to take care of handicapped people. Education, vocational rehabilitation, and community-based care decrease the costs of handicaps; without them, institutional placement and costs will inevitably obtain, placement that generally is injurious and more expensive than any other kind.

7. Some people, including those in the Reagan Administration, seek to reduce the federal role because it wants to change the balance of federal-state/local relationships. In their view, the federal government has deprived state and local governments of their traditional "autonomy" to operate such human service programs as public education, health, mental health, and social services. The "New Federalism" proposal is keyed to the idea that greater power over federally supported programs should be given to state and local governments. More than that, however,

it also seeks to transfer to state and local governments many programs, and the funding responsibilities for them, that the federal government now operates. The answers to these reasons are set forth in the balance of this chapter.

## Methods to Defederalize

An important question is whether defederaliztion should occur. But, to answer that question, it is necessary to understand how defederalization may occur and the consequences if it does occur.

Defederalization will take many forms. One form is reduced budget "authority" and "appropriations." The Congress can reduce the amount of funds authorized for certain disability-related programs; the "authorization" sets the ceiling for expenditures. But Congress does not have to agree to spend at the authorized level; frequently, it agrees to spend less than it authorizes, and this amount, called the "appropriation," sets the actual dollar figure for a program. By reducing both the authorization and appropriations, Congress can reduce federal participation in disabled people's lives by cutting reducing or eliminating some programs.

Naturally, a direct repeal of some federal laws is another way to defederalize. For example, the Administration sought in 1981 to repeal the law that authorized the Legal Services Corporation. If it had been successful, low-cost or free legal services for disabled people would not have been federally subsidized and the ability of disabled people to enforce their rights would have been impaired.

Another approach is "block grants." In essence, those who favor block grants would substitute even more "block grants" for "categorical grants" to state and local governments Congress enacted in 1981. To put it another way, federal programs that directly and indirectly benefit disabled citizens would be further consolidated with each other and with programs for other citizens, and federal financial assistance, presently required to be spend for disabled people, would be spent on them only in the unlimited discretion of state and local governments.

Still more defederalization can occur through government reorganization. For example, a proposal to abolish the Department of Education represents nothing more than an effort to extricate the federal government from educating any child, disabled or not, by assigning education to lower-status agencies.

Personnel action is a major way of carrying out defederalization. By appointing people to governmental positions who wish to defederalize or have no allegiances to disabled people, a federal Administration can assure a nonresponsive bureaucracy. Likewise, by failing to fill vacancies, by "furloughing" employees for short terms, by "reductions in force" (job terminations), and by making federal employment undesirable for the disability advocates who remain (so they leave government service for other work), a federal Administration can shrink the federal government, make it less favorable to disabled people, and thereby achieve some measure of defederalization.

Clearly, deregulation will cause defederalization. If the regulations governing handicapped children's eligibility for federal special education money are changed to tighten up the definition of who is handicapped, water down the requirements of an individualized education program, take the pressure off schools to "mainstream" handicapped children, or eliminate the notice that schools must give parents that their children are to be evaluated for special education placement and put into or out of special education, then local and state educational agencies will have wider latitude for educating disabled children and the children and their parents will have far fewer rights to an appropriate education.

By chipping away, bit by bit, at major entitlement programs like Social Security, Congress can accomplish defederalization incrementally, not overnight but just as surely and perhaps with less opposition because small increments of change are less likely to be seen and opposed than large ones.

Clearly, defederalization occurs when the federal government refuses to enforce federal laws. Thus, federal law that provides for the Justice Department to sue on behalf of institutionalized disabled people whose federal rights are infringed by state or local officials (Civil Rights of Institutionalized Persons Act, 1980) clearly will not be enforced by the Reagan Administration or any other administration intent on defederalization. A consequence will be reduced federal oversight with respect to state institutions, even those that receive federal support.

A subtle way to defederalize is through tax legislation. The 1981 tax reductions, combined with "tax-indexing" to offset inflation, will have the inevitable effect of diminishing federal tax receipts. The same can be said of the Administration's efforts to enact tuition-credit laws so that parents who enroll their children in private schools are partially subsidized by tax laws. With less money to spend, the federal government will be able to do less for disabled people, just as it will be able to do less for all people.

Finally, by allocating an increasing share of the federal budget to defense expenditures, the Congress defederalizes human service programs because it choses to spend less on "butter" and more on "guns" and, because of 1980 tax reform, has less money (absolutely) to spend. Thus, both relative and absolute reduction occurs.

## Consequences of Defederalization

Defederalization can have major consequences for disabled people and their families. Clearly it would affect disability-related programs. More than that, however, it would have profound consequences for the ways in which disability interest-groups relate to other minority interest-groups and to each other, for the ways in which rights for disabled people are enforced, for the assumptions that families with disabled people can or cannot make, and for ethics and public policy.

### Program Consequences

Funding. Assuming it is successful, defederalization in the form of reduced federal authorizations and appropriations will dry up a major source of funds for disability programs. Nor will state and local governments be able to substitute their funds for lost federal funds on a dollar-for-dollar or even a less favorable basis. This is so because the federal government makes the most effective use of the most effective tax of all, the personal income tax, by taxing at a higher effective rate than state or local governments. Likewise, state and local governments use relatively more regressive taxes, such as the property tax. One consequence of this is that the people who are at the bottom range of ability to pay taxes are hit relatively harder by a property tax than those at the upper range of income. When property taxes have become too onerous, property-tax revolts (the "Hancock Amendement" in Missouri) have become successful and have hampered the ability of state and local governments to raise funds for human service programs. Proposition 13

(California), Proposition 2½ (Massachusetts), and similar tax revolts can be particularly devastating for disability programs because the cost of those programs ordinarily is higher than the cost of other non-disability programs. When voters and tax-payers learn that special education is more expensive than regular education and that the cost of public education (as a whole) is increasing because (among other reasons) more handicapped children are attending school, they can be especially single-minded about clamping down on special education (or similar programs) (Pittenger & Kuriloff, 1981). Thus, defederalization, coupled with regressive state and local tax structures, can be singularly harmful to disabled people's programs and indeed can add fuel to the "backlash."

Repeal. Defederalization that takes the form of repeal of federal laws can have several insidious consequences. Obviously, it can kill major federal programs altogether, leaving a vacuum that the states may not fill; legal aid is a prime example of a federal program that many states probably would not subsidize. Less obviously, repeal would eliminate certain rights that federal laws grant to disabled citizens, such as rights to placement in less restrictive environments, individualized programming, procedural due process, and nondiscrimination. Such rights now exist under federal laws affecting education, vocational rehabilitation, and institutional care. Essential data-collection requirements, which are requisite to informed policy making and evaluation, would not occur on a national basis; neither federal nor state policy would be as intelligently made or evaluated as in the past, a consequence that can adversely affect everyone, disabled or not. Finally, a subtle "modelling" effect could occur: as state legislatures see Congress' success in repealing federal laws, they may become inclined to follow suit, especially if the state programs are expensive, politically difficult to defend against nonhandicapped interest groups, or both.

Block Grants. "Block grants" are a major tool of defederalization. They also are just the first step toward the ultimate withdrawal of the federal government from human services. For these two reasons, they merit special attention. A hallmark of block grants is the discretion they give to state and local governments to spend none, some, or all of the federal money on handicapped or other citizens. Given that disabled citizens are a minority of relatively powerless people served by many of the human service programs, they have no assurances that they would receive the benefit of any federal funds. This prospect is made more real because, under some proposed block grants, their present rights to service (e.g., under the Education for All Handicapped Children Act and Developmentally Disabled Assistance and Bill of Rights Act) would be repealed. Without rights to service, they will have no leverage to require any federally financed services.

It is not justifiable to approach administrative costs-savings by imposing unacceptable consequences on disabled citizens. Nor is it clear that administrative costs would be substantially reduced by block grants. Block grants will not assure increased state and local government efficiency; indeed many administrative costs are incurred solely because of state and local regulations, not federal ones. Federally financed programs still will have to be administered planned and coordinated. Unlike present federal categorical-grant laws, block grants probably will not impose a ceiling on administrative costs; there will be no assurances that more money will be spent for direct-service purposes. And, even if one assumes a 10% administrative cost saving, the reduction of federal aid by 25%, coupled with an inflation rate of nearly 10%, will result in 25% less money for direct services.

Under the pretense of "reducing regulatory burdens," block grants actually repeal retarded citizens' federally assured rights to federally financed services. For example, a proposed education block grant would have repealed the Education for All Handicapped Children Act; the social services block grant sought to repeal the Developmentally Disabled Assistance and Bill of Rights Act, the protection and advocacy systems authorized by that law, the Legal Services Corporation, and the ICF-MR program of Social Security. These rights and their implementing regulations are necessary because they enable disabled citizens and their representatives to cure the default of state and local governments to serve them at all or serve them adequately; they implement handicapped citizens' federal constitutional rights; and they set professionally sound standards for treatment of disabled people by state and local governments.

The claim that block grants will grant state and local governments increased flexibility seems to be true (despite the fact that the grants still impose conditions on state and local governments). But with such flexibility, state and local governments can chose not to serve disabled people at all or at diminished levels; they can substitute federal money for state and local money, thereby reducing the overall level of servies for disabled citizens; and they can shift the taxing responsibility to local governments. To do this is to incur the likelihood of a Proposition 13 response; this in turn would be to the detriment of disabled and all other dependent citizens, including many nonhandicapped ones.

More dramatic, however, would be the irresponsible overall effect of block grants and other defederalization on disabled citizens. In fact, block grant proposals, when coupled with reductions in federal aid, repeal of laws, deregulation, government reorganization, and incremental reduction of programs, are nothing less than a frontal assault on the network of services that constitutes the only guarantee that disabled citizens will not be consigned to lives of unwarranted and unncessary indignity, frustration, nonproductivity, and dependency (Turnbull, 1981).

Like most excesses of vogues, block grants overreach themselves. These "consolidation programs" vitiate the direct relationship of the federal government to disabled people. They disregard the fact that a handicap is a distinction that makes a difference, that justifies a special relationship between the federal government and disabled people. They blindly ignore two important facts of history: many states never performed these services or performed them inadequately.

State and Local Administration. As defederalization moves ahead, as federal funds become less available as, and state and local governments become intractably locked into regressive tax structures and feel the heat of the recession-afflicted national economy and political backlash, street-level bureaucrats undoubtedly will find ways to administer federal-state-local programs that could hurt disabled people. They may tighten up eligibility and diagnostic standards, exclude from any service any one who does not fit neatly into existing programs (they will create "cracks" and "gaps," especially for people with dual diagnoses), turn generic programs (e.g., vocational rehabilitation) into specialized programs by excluding hard-to-handle cases, use "mass" or "group" techniques for diagnosis and treatment despite requirements for individualized programming, exclude disabled people from "mainstream" programs because of the absence of special aids to support them there, reduce the number of related services available to handicapped children, and in other ways maintain only the semblence, not the reality, of programs for disabled people.

State-level administrative agencies themselves will be adversely affected by defederalization, especially financial retrenchment, becuase federal monies are used to pay state employees. Reduced state government most likely will mean less state technical assistance to local government (reducing the assurances of higher quality programs) and less state oversight and monitoring of local programs (reducing the ability of disabled pople to enforce their rights). If state agencies seek to retain as much federal money as possible and pass as little as possible down to local governments, locally administered programs will be hurt and state-local relationships impaired.

In addition, many state and local agencies are unaccustomed and perhaps unprepared to administer the large number of complex programs that might be turned over to the. State and local administrators and legislators legitmately fear that they will be blamed for the cutbacks in service, the increase in taxes that may be caused by federal retrenchment, and interect-group lobbying. State and local advocacy for programs of course simply atomizes the effectiveness of disability interest-groups, making it less easy for them to concentrate their efforts at a single point--Congress and the federal agencies--and requiring them to focus instead on 50 states and vast numbers of local governments. Undoubtedly, one of the most machievellian aspects of defederalization is the atomization of advocacy that it causes.

## Effects on Advocacy in Legislatures, Agencies, and Courts

I have argued that defederalization will atomize special-interest groups' political effectiveness by transferring to 50 state governors and legislatures the political pressue that can be centralized in Washington and brought to bear in concentrated form on one President and one Congress. Together with this depletion of power, however, come other consequences.

One of them is the likelihood that even more atomization will occur as state agencies and legislatures transfer to a multitude of local agencies some of the responsiblity for raising funds and allocating them to human service programs. Decentralization of government need not stop at the state level; indeed, decentralization already characterizes many state-local relationships.

As decentralization occurs, not only will political interest groups' effectiveness be jeopardized but so, too, will the ability of recipients of service to achieve accountability in the service systems. This will be so for these reasons. First, accountability over a multitude of human service agencies can occur at a local level only with voluntary cooperation of the different agencies or persistent advocacy by consumers; there are, however, limits to the persistence that any one can bring to bear on different agencies (especially those that are separately financed, governed, and administered), and, while voluntary cooperation does occur, there rarely is any systemmatic, institutionalized procedure, developed at a local level, for obtaining it. Second, the power to enforce the rights of consumers usually lies, in the administrative scheme of things, in the state-level agency; in the absence of judicial remedies, accountability can be compelled against a non-complying local agency at the higher level of government far better than at the lower level. But decentralization may attenuate the consumer's capacity to resort successfully to a higher level of government because authority for administering the program (or even for deciding whether to offer a program) will lie in local officials' discretion. Third, interagency cooperation generally is more difficult to obtain at the local level than at the state level because, while state agencies are governed usually by cabinet-level officers (many of whom are appointed by the governor), local agencies frequently are governed by independent boards, agencies, or commissions. These boards usually are independent of each other in important ways; they are independently elected or appointed, sometimes do not have conterminous boundaries or service jurisdictions, sometimes have independent taxing and fund-accounting authority, usually are governed by non-integrated laws, and usually have different (and sometimes conflicting) missions and constituencies. All in all, the local route to accountability can be made harder, not easier, because of decentralization.

Finally, parents and other representatives of disabled children may experience a reduced ability to enforce their rights in court against recalcitrant state or local agencies. This could happen for several reasons. First, defederalization may result in a repeal or watering down of rights under federal statutes or regulations; a consequence would be that disabled people simply have fewer rights to enforce in court. Second, "regulatory reform" also could result in requirements that consumers must "exhaust administrative remedies" before going to court. These requirements, which already exist in P.L. 94-142, for example, foreclose immediate resort to a lawsuit and compel the consumer to take appeals to the administrative agency that is responsible for providing the service. Only after the consumer exhausts these appeals is a lawsuit permissible. A consequence is that the final enforcement of the consumer's rights can be delayed substantially. Third, the disabled person's right to a court appeal itself may be cut off by regulatory reform. Under some statutes, such as Section 504 of the Rehabilitation Act, a "private right of action"--the right to sue in court--can be implied; under others, it is explicit; and under still others it does not exist as a general rule. Regulatory reform that denies the right as a matter of course would be consistent with reducing the presence of the federal government in handicapped people's lives.

Recent court decisions involving disabled people do not augur exceedingly well for them, but their rights are still enforceable. The consequence is that lawsuits, when allowed, still constitute a viable route for them. The Supreme Court's decision in Pennhurst v. Halderman (1981) was narrowly drawn, but still significant. The Court held that the Developmentally Disabled Assistance and Bill of Rights Act does not permit a resident of an institution to compel a state to provide the resident with adequate treatment and habilitation in the least restrictive environment. While the Court did not rule on many of the right-to-treatment arguments that had been successful in other lawsuits (such as those based on federal constituional or state statutory grounds), it did express its doubt whether Congress meant for residents of state institutions to have any recourse to courts at all (a "private right of action"). A federal district court, in Garrity v. Gallen (1981), later ruled (relying on Pennhurst) that the DD Act does not allow residents to sue a state under the DD Act to enforce the rights to treatment set out in the Act; their only remedy is to one to compel the U. S. Secretary of Health and Human Services to withhold federal funds from states that violate the Act. The Court also ruled that a resident may not sue under the Federal Civil Rights Act of 1871 (Section 1983) to recover damagers from any state officials who violated their rights to treatment; the reason for this result is that the DD Act contains its own exclusive remedy and, accordingly, a remedy under Section 1983 is impermissible. The result of *Pennhurst* and *Garrity* is to limit state responsibility to instutionalized people and to impose a great distance between the person and the service provider by requiring the person to sue the Secretary of HHS successfully, a process that is as time consuming as it is expensive and likely to be unprofitable because the Secretary's approval of the state's treatment plans is required before a state may receive federal funds. By the same token, there is now a trend in the cases to disallow a suit brought under Section 1983 by a handicapped child against school officials for damages incurred by him because they derived him a free appropriate education, as provided by P.L. 94-142. These courts reason that P.L. 94-142 provides an "exclusive remedy" for its violation through due process hearings and substantive provisions of the law (appropriate education, least restrictive placement, etc.) (Anderson v. Thompson, 1981).

Section 504 (the federal nondiscrimination-because-of-handicap act) nonetheless is available to disabled people. *Garrity* ruled that the statute required individualized treatment; *Lynch v. Maher*, decided by another federal court in 1981, held that a quadripelegic is entitled to home health care where, if the care were not forthcoming, she would be institutionalized.

P.L. 94-142 continues to be relatively fuitful for disabled people, with respect to their rights to an appropriate education (Turnbull, 1981; Turnbull, Brotherson, & Wheat, in press). Indeed, the rights of institutionalized school-age people to an appropriate education is now established under *Garrity* and *ARC in Colorado v. Frazier* (1981).

Institutionalized people continue to have federal constitutional rights to treatment under both *Pennhurst*, as decided by the trial and appellate courts, *~~Romeo v.~~ Youngberg* v. Romeo (198~~0~~2), ~~soon to be decided by the Supreme Court~~, *Scott v. Plante* (1981), and even under *Garrity*. They also have limited rights to refuse certain kinds of treatment, *Rennie v. Klein* (1978) and *Rogers v. Okin* (1980).

Medical treatment for retarded children seemed less likely to withheld, even when parents do not want it, as a result of the famous *Phillip Becker* case (1979). But the Indiana case of "Infant Doe," a Down's syndrome newborn whose parents, with approval by the state's highest court, starved him to death, signals an intolerable reversal of the *Becker* principle that parents do not have unlimited freedom of choice (1982). Involuntary sterilization is receiving greater judicial scrutiny as is the use of guardianship as a means for obtaining third-party control over a disabled person and his property. And the rights of a disabled person to sue ("private right of action") state and local officials under Section 504 is still present in post-*Pennhurst* cases such as *Pushkin v. University of Colorado* (1981), *Doe v. New York University* (1981), *Hutchins v. Erie City* (1981), and earlier cases (Turnbull, 1981).

It is not appropriate here to review and analyze all the relevant judicial decisions involving disabled people. It is, however, important to note that judicial remedies are still available, that Section 504 and the Civil Rights Act (Section 1983) are still viable but limited remedies, and that, as defederalization and decentralization occurs, disabled people and their parents will still be able (at this writing) to vindicate themselves in court. It is by no means unlikely that they increasingly will use the courts to protect themselves, especially under constitutional theories, Section 504 and similar provisions in the now block grants, and Section 1983, as their recourse in legislative and administrative forums is made more difficult because of defederalization.

## Competition for Funds and Programs

Block grants and street-level administration of federally assisted programs can have disasterous societal consequences for disabled people and others who traditionally have been subjected to discrimination. Because state and local discretion will be greater (and federal regulation lower), there could be increased pressure brought by all "disadvantaged" groups to obtain such funds as there might be. Thus, the "welfare mother" will compete with the family of a young disabled child for early education programs; blacks, ethnic minorities, women, elderly people, and the handicapped worker will compete with each other--and with the able-bodied white male--for employment opportunities; advocates for learning disabled, retarded, physically disabled, and emotionally disturbed children will compete with each other for the increasingly scarce special education dollar; disabled veterans of Vietnam and other disabled people will compete against each other for vocational rehabilitation programs; etc.

It is to be hoped that large-scale social disruption will not attend the inevitable competition for a place on the "social safety net" and that coalition-building among traditionally disadvantaged groups will obtain, but a hope is not a statement of reality. Mean-spiritedness, already a hallmark of the "trickle-down" theory of "supply-side" economists, may overtake not just the economic and social monorities but also the less afflicted members of society, those who are mentally, physically, and financially less "better off" than others. Division, schism, and factionalism will profit neither disadvantaged nor relatively "advantaged" people; the fabric of society can be rent too easily and the greater communal interest hidden too easily when vicious special-interest competition and class struggle occur. Ironically, while it may have been one of the present Administrations's great coups that it was able to divide and conquer the disadvantaged in 1981, such division and vanquishment could well be the most lamentable consequence of immediate success: it could galvanize a political reaction to defederalization that will stop it in its tracks.

Loss of Federal Citizenship. Defederalization will have another major impact on handicapped citizens and their families. It will reduce their rights under federal law and thereby diminish their "federal citizenship." That term refers to the rights of disabled people as citizens of the United States. It distinguishes their rights under federal law from their rights under state or local law. When federal laws are repealed or their administration is made discretionary with state and local governments, disabled citizens are stripped of legal rights they were granted by the government of the United States in their capacities as citizens of the United States. And, as they are downgraded in their federal citizenship, they simultaneously are relegated to more (but not necessarily better) citizenship as citizens of state and local governments.

This cycle of events would not be so alarming but for the traditionally favored status that the federal government has granted disabled citizens in comparison to the less favored status that state and local governments have accorded them. The general failure of state and local governments to create new rights for disabled citizens or enforce their existing rights under state or federal laws, including the federal constitution, was the principal reason that disabled people and their representatives turned to the federal government for aid and comfort, for the establishment of new rights and enforcement of existing ones.

While state governments indeed have made great progress in recent years in creating new and enforcing present rights of disabled citizens, much of the impetus for their new or reformed laws affecting special education, involuntary commitment, guardianship, sterilization, habilitation and treatment, and community-placement has come from the success that disabled people and their representatives had in federal coruts and the Congress. As the opportunity to obtain new federal laws or to use federal courts and administrative agencies to implement, monitor, and enforce federal laws that are administered at the state and local levels declines as a consequence of defederalization, so will the incentive for states to imitate federal legislation. This potential defederalization, followed by a diminuition of state initiative and by state modeling, will be made all the more likely because of the atomization of advocacy that also accompanies defederalization.

One other untoward consequence is almost certain: as disabled people lose some attributes of their federal citizenship and have their state-based rights jeopardized, they run the grave risk of being returned to second-class citizenship, of having their emergence from discrimination and devaluation reversed and of being relegated again to a lower status in society. It is not at all farfetched to conjure up a vision of defederalization that is inexorably followed by loss of federal and state citizenship rights and the reestablishment of dual, less favored citizenship.

The Assault on Assumptions

One of the distinguishing characteristics of being a parent of a disabled child has to do with the parent's inability to make the same assumptions about his or her life or the life of his or her disabled child as the parent can make about the life of a nonhandicapped child or even about his or her life without a handicapped child. For example, my wife and I make different assumptions about our two nonhandicapped daughters than we do about our mentally retarded son; we assumed in 1979 that:

"1. Our daughters will have a public education, and we expect it will be generally appropriate. Although our son has a right to an appropriate education, guaranteed by federal and state laws, we cannot simply assume that the legal guarantee will be effectuated;

"2. Our daughters will directly benefit from many public recreation programs. Although it is true that Jay can enroll in a limited number of programs as a matter of right, his meaningful participation cannot be taken for granted. We still have to be vigilant in assuring that he is enrolled and integrated into the activities;

"3. Our daughters will have socialization opportunities which will be selfinitiated and relatively easy to establish, blending into the normal experiences of their peer groups and social setting. To a large extent, Jay's socialization will have to be contrived, and he will always be a "curiosity object" to many people within the community;

"4. Our daughters will be served by public health services and hospitals. Although state and federal laws provide that Jay may not be excluded from such services because he is handicapped, we know that the absence of people in those programs who can accommodate Jay's handicap (as distinguished from being able to treat this diseases or broken fingers) is a major barrier to his receiving services there;

"5. Our daughters will, in the normal course of events, go to college, find jobs, and establish their own residences and their own families. Although there are adult education programs for retarded people, they are scant and primarily vocationally related; Jay's prospects to work in noncompetitive settings are hardly cheering; his and our choice of congregate living

> settings is limited (although increasing); and his chances for nonrelated family ties are almost utterly serendipitous unless he is admitted into a coeducational group home" (Turnbull & Turnbull, 1979).

As defederalization gathers force, however, our assumptions in 1982 must change from our assumptions in 1979. Then we assumed Jay's right to an education and were concerned whether the legal guarantee would be carried out; today we cannot even assume the continued existence of his federal right to an education under P.L. 94-142. Then we assumed Jay would have the protection of nondiscrimination laws that affect, among other things, his access to recreation and health programs; today, we cannot assume Section 504's regulations will remain unchanged or even that Section 504 (the federal nondiscrimination law) will not be repealed. Then we assumed Jay *might* have a chance for noncompetitive employment and group-home living; today, we are far less able to make that assumption. Indeed, then we assumed Social Security programs would help Jay; today, we know those programs and our assumptions are in great peril.

It seems clear, then, that defederalization not only has challenged our recent assumptions but also required us and all parents of disabled children to reexamine our assumptions, make new ones, or refuse to make any at all. But more than that, defederalization points out to us, as though we needed any reminder, how vulnerable we and our disabled children are, how fragile are the foundations upon which we build our lives. And, worst of all, defederalization raises for us those existential issues--why me? what does "disabled" mean for me and my child?--that always are present but that seemed to be less troublesome when public policy was more favorable to our children and us. Defederalization thus has not only important political consequences for disabled children but also profound and troubling value-related consequences, too: it tells us that we and our children soon could be second-class citizens, that the assumptions by which we lived are ephemeral, that we and our children are uniquely vulnerable because of our children's disabilities, and that we must face anew disturbing questions about the meanings of our lives and our children's lives.

## A Crisis of Values

Defederalization, in the sense that it represents a withdrawal of the federal government from human services, may be an accurate reflection of current public opinion. After all, the "mandate" given to the present Administration arguably was to proceed posthaste with defederalization through deregulation and tax reform. If defederalization does mirror accurately the public's prevailing mood, there are ominous portents for disabled people and their families.

Public-opinion samplers recently have discerned a mood of selfishness, egocentricity, and self-regarding behavior in the public (Yankelovitch). The "me" generation has grown up and, with its new earning and voting power, is busily and happily engaged in the pursuit, acquisition, and enjoyment of material goods and leisure time. A similar pattern of behavior exists for young parents of disabled children. But those younger parents who have disabled children also have federally guaranteed or funded educational and health services for their children; they need not engage in the same fight for services that their elders did (at least not until, if ever, defederalization's full impact is felt by them and their children). Defederalization thus does not seem to them to be terribly threatening, and political activism by them--individually or collectively through membership in parent and professional assocations for disabled children--is not a high priority for them. They too are seduced into the self-directed behavior in public policy matters that characterizes so many of their contemporaries. The consequence is that the usual antidotes to public selfishness--parents of disabled children who express their own selfishness in terms of attempting to secure governmental services for their disabled children--are relatively ineffective. For them in small part and for their contemporaries in larger part, defederalization is consistent with their self-regarding behavior because it reflects their beliefs in less government and greater opportunity for unregulated self-gain.

Another current phenonemon is apparently consistent with defederalization, and that is the ideological bias of the "new right," "neoconservatism," "radical individualism," or "moral majority." The "individualistic" ideology has replaced a "collectivist" one, at least for now. Indeed, the ideological underpinnings of the newly awakened selfishness are powerful and should not be underestimated: laissez-laire and "liberty." Some of the political "liberals" are now embracing "conservative" economic theories; the "New Deal liberals" are the old guard of the liberal bloc in politics. The lines between the staunch conservatives, who would replace the current federal presence in the lives of citizens with none or with their own, and the new liberals, who seem willing to try a new brand of federal economic activity, are blurring daily. And a sense of community values, of individual and collective responsibility to each other, is fast eroding as other-directed behavior is more expensive to afford and less ideologically rewarded, as the ideology of "community" or "fraternity" (in contrast to "liberty") is put under assault.

Materialism and humanism have not been so clearly at odds with each other in several decades. "Hard times" may indeed produce new ethics--ethics of selfishness (Callahan, 1981). If they do, social Darwinism--the survival of the fittest--will prevail and, in the struggle for survival, disabled people and their families will be the last to be admitted to shelter and the first to be jettisoned. They will experience unemployment longer than able-bodied and sound-minded people; special education will take its share of cuts and probably more than its share; and disabled people who need medical care will get it last, solely because they are disabled. The accounting maxim "last in, first out" will become used to describe how disabled people are treated (again).

The crisis is, simply put, one of values, and the issue, in its starkest form, is whether disabled people are expendable. For those of us who are morally and legally responsible for disabled people (whether as relatives or clients), we experience an uncomfortable existence, life on the razor's edge of public selfishness. Defederalization has raised the issue of expendability; the tradegy would be for it to provide the logical answer. That answer would be, "yes."

## Actions for Parents and Professionals

It seems clear in this face of rather pessimistic result that parents and professionals in the developmental disabilities movement can take joint and independent action to mitigate the effects of defederalization efforts. Indeed, the prospects ~~to~~ of defederalization very well may cure the parent-professional and professional-professional schisms that an over-abundance of ideological purity and unwise advocacy has produced in the past (Turnbull, 1978; Roseberg and Friedman, 1978).

### Professional Responses

Just as it was possible when the nation's economy allowed for the creation of P.L. 94-142 and other rights for handicapped children to entertain disagreements concerning the nature of those rights and their enforcement, so it is apparent now that the economic realities of the early and middle 1980's make it important for parents and professionals to refocus their attention on what is relatively more important than something else. In particular, professionals must re-examine whether their principal loyalties are to themselves and their professional colleagues or to the developmentally disabled children and adults whom they serve. There is no question about it: a professional loyalty to disabled people has caused conflicts of interest for many professionals. Nowhere is this conflict better illustrated than in deinstitutionalization--the movement to reform institutional conditions and to depopulate large state residential institutions.

While logically related to the establishment of the rights of normalization and treatment in the least restrictive alternative setting, deinstitutionalization was an impetus for legislation under which the United States Department of Justice might bring a lawsuit against states for operating institutions in which the federal legal rights of developmentally disabled people have been jeopardized or denied (Civil Rights of Institutionalized Persons Act, 1980). By the same token, deinstitutionalization reform created a climate in which developmentally disabled people might assert that the Civil Rights Act of 1871 is the basis under which the administrators of those institutions are personally liable to residents of the institution for denying them their federal and state legal rights to treatment and habilitation in the least restrictive environment (~~Romeo v.~~ Youngblood v. Romeo, 198~~0~~1). In an era that saw a geometric advance in the rights of handicapped people, it was clear that the loyalities of some professionals who serve them were severely tested by such laws as these. Under those circumstances, it was perhaps logical that some professionals would begin to engage in self-regarding behavior and take the position that the disabled person's rights were not more important than the professionals' rights to serve them and not be held liable for the kind of service where the professionals themselves are operating in a melieu that itself is depriving and over which the professional had little control. Thus, professional loyalties faced a stern issue: do they lie with the clients or with the professional? Defederalization may cause professionals to answer that question by asserting that their loyalties lie with the clients and that such advances for clients as can be obtained under defederalization ultimately will serve to help the professionals. The time may be right for the reshaping of a professional-parent alliance, one that was responsible in the early 1970s for the creation of rights in the first place. This would occur only if professionals, in examining their loyalties, agree~~s~~ that their loyalties are first with the client and only second with their professions.

Professionals also will be required to address the cost-effectiveness of the services that they provide. Fiscal retrenchment at the federal, state, and local level is already underway, and debates are being waged in Washington and state capitals concerning the cost-containment of human services, especially medical services. It becomes important in these debates for professionals to conduct research on the cost of the services and on their economic and programmatic benefits. Likewise, if the research indicates that the services are cost-effective, it becomes encumbent on professionals to communicate that fact to policy makers and parents. Perhaps one of the unseen advantages of the threat of defederalization will be that such research will be forthcoming. Again, as in the situation of professional and parent loyalties, the relatively easy money that was available in the early and mid-1970s enabled services to be created without primary regard to their cost and effectiveness. If defederalization requires cost and effectiveness to be addressed, it may be beneficial for the professional, the client, and the taxpayer.

Third, professionals in the disability field no longer have the luxury of being the only people who have been trained in providing services to disabled people or being the only or even the primary people to provide those services. Again, defederalization, especially in economically sparse times, seems to suggest that a separate, specialized service providing system may be too expensive or that it cannot be afforded at the same level as earlier. Thus, it becomes important for the specialist in the area of disabilities to "mainstream" his profession with colleagues who do not specialize in disability areas. For example, the potential demise of the Congressionally financed Legal Services Corporation may persuade the "disability lawyers" that they must become more active in the "mainstream" bar and recruit and train lawyers who are not specialist in the areas of disabilities to be competent in those areas (Turnbull, 1981). By the same token, the preservice and inservice training of pediatricians, family care physicians, and other health professionals should take into account the fact that specialization in disability matters, while necessary, cannot be afforded at the same level in the past. Accordingly, the education and re-education of such professionals who do not specialize becomes a professional responsibility of the specialist so that the disabled client will have a greater opportunity for access to treatment.

Finally, of course, professionals who choose to disregard the political advantages that can be gained from alliances with parents of disabled people assume an Ostrich-like posture. It is clear that, just as they must exam their loyalties, so must they enlist the support of the people whom they serve. Their failure to do so will bode ill for the nature and level of financing of services of disabled people; it is quite simply a matter of professional self-interest to be allied with the client's representatives.

Parent Responses

It seems also obvious that parents of disabled children and youth and adults have some opportunities and responsibilities that they did not face before a period of defederalization. Indeed, those opportunities and responsibilities recall the lean years of the late 1960s and early 1970s. Thus, for example, the parents of disabled people need to enlist the sympathetic imaginations of people who are not handicapped, particularly those who are employed in or affected by the generic service systems that serve handicapped children. Those services include public education, public transportation, public recreation, public health, and mental health. Unless the parents of handicapped children can continue to keep alive the sympathetic imagination of service providers and nonhandicapped people who are served by generic and specific programs, they will find that they will lose some of the major allies that they need to continue to retain and increase the rights of handicapped people (Turnbull, 1978). Quite simply, it is a matter of the majority process: if disabled people and their representatives are not able to command an affirmative response, one that necessarily includes a positive response by nondisabled people and their representatives, then they clearly will be out-voted and find themselves once again in an unfavorable position. One of the aspects of the majoritarian process that people who represent disabled people have perhaps forgotten is that, in the Congress and in state legislatures, might does make right, where might is defined as the ability to command a majority vote.

One way that disabled people and their representatives might keep the sympathetic imagination of nonhandicapped people alive is to heed the voices of moderation. Clearly, an era of defederalization is not one in which major advances on behalf of handicapped people can be made; the prospects for creating new legal rights, increasing the funding of services for disabled people, creating new and separate service systems for them, funding research and training model program initiatives in handicapped matters, and successfully litigating on behalf of handicapped people are far less promising than they have been in the past. This being the case, it may be advisable for the advocacy posture of disabled poeple and their representatives to be one of holding the status quo and of making it clear to themselves and others that, during such an era and given the economic conditions of the early 1980s, they are willing to be temperate and to share in both the advances and the retrenchment that defederalization might cause for other human service systems.

While the creation and enforcement of new rights moved forward at a grand pace during the mid-1970s, it was predictable that not all of the advances would be well received. In particular, some of the rights that handicapped people were able to secure clearly undercut their ability to retain the sympathetic imagination and political support of people in the "nonhandicapped arena." For example, cases that established the right of some handicapped children to attend school twelve months of the year (Armstrong vs. Kline, 1981), to obtain interpreters for deaf children during all aspects of their education (Rowley vs. Hendrick Hudson, 1980), and to obtain private school placements, and ~~for~~ psychotherapy for themselves, both at school expense, were expensive not only in terms of their implementation by the public schools but also in terms of the political capital that they cost.

More than moderation is called for during eras of financial retrenchment and defederalization. Disability groups that traditionally have disagreed among themselves now must face the prospect of their house being divided and not standing unless they can agree that there are more grounds upon which they can act in concert than individually and separately. Likewise, disability groups that have relied largely on litigation as a major means for advancing the rights of handicapped people will have to pay increasing attention to mundane but important aspects of political action: the creation of political action committees with other disabilities groups; the grassroots involvement of their members in political campaigns (by making financial and volunteer-labor contributions); by shifting their focus from the Washington scene to the political action in state and local capitals; and by becoming far more sophisticated concerning political lobbying techniques. Finally, parents alone will not be sufficient representatives of disabled people. Unless they can command the support of a majority of the professionals who serve disabled people, they will be a rather isolated and ineffective voice.

## Conclusion

Defederalization poses some unhappy prospects for professionals and parents in the disability business. Nonetheless, it also can provide them with some challenging opportunities and even with the opportunity to make progress by solidifying the rights of handicapped people.

Whether this prospect will obtain depends largely on the articulation of values and the adoption of moderation by those who propose to defederalize the lives of handicapped people as well as by those who would retain a substantial federal presence in their lives. It seems that the blessing of defederalization, then, can be the clarification of values and ethics, not the willy-nilly advancement of disparate interests and rights, unattached to a system of values.

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Senator **Weicker**. The subcommittee will now stand in recess.

[Whereupon, at 12:46 p.m., the subcommittee was adjourned.]